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GUIDELINE TRANSMITTAL SHEET

GUIDELINE NUMBER NOV 20 NPS-48	TITLE Concessions	RELEASE NO. 1
OFFICE OF ORIGIN Clemson University Concessions Division (680)		AMENDMENT NO.
		DATE July 26, 1984

Explanation of material transmitted:

Transmitted herewith is the initial issuance of the Concessions Guideline (NPS-48). This guideline provides a complete description of the Concessions Program and provides information, direction, and guidance to those NPS personnel who are responsible for and/or involved in implementing and administering the Concessions Program.

This guideline is a comprehensive reference source, in that, to the extent possible, it contains all laws, regulations and policies in one place, thereby enabling the elimination of all prior memoranda issued regarding Concessions policy or procedure.

The revised Standard Contract Language, Exhibit 2 to Chapter 6, has been updated to include changes made in the last several years. Section 3(b)(3) has been completely revised to incorporate new nondiscrimination language occasioned by the enactment of the Age Discrimination in Employment Act and Section 504 of the Rehabilitation Act. The Nondiscrimination Language (Exhibit B) to the contract has also been completely revised to incorporate the provisions of the above-cited acts. The standard Fact Sheet and Prospectus languages have been revised to incorporate new policy changes. These documents should be used immediately for all new and renewal contracting actions.

The publication of this guideline renders the following obsolete:

Special Directive 79-2 dated March 13, 1979, "Preparation and Execution of Concession Contracts"

Concessions Manual dated March 27, 1979

Staff Directive 76-10 dated November 11, 1976, "Use of Concession Facilities for Conventions and Groups"

Suggested revisions on this guideline are welcomed and should be directed to the Chief, Concessions Division (WASO). Please keep this transmittal sheet and all future transmittal sheets in the front of this guideline for ready reference.

Assistant Director, Personnel & Administrative Services

CONCESSIONS MANAGEMENT GUIDELINE

NPS - 48



Release No. 1

4B-375

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APPENDIX A - Chronological Legislative History of Concessions

INTRODUCTION

A. HISTORY

The Act of August 25, 1916, as amended (39 Stat. 535; 16 U.S.C. 1), establishing the National Park Service, the Concessions Policy Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), the Management Policies of the National Park Service and Title 36 CFR 51 form the basis for authorization and administration of the National Park Service Concessions Program. The former Act authorizes the Secretary to "****grant privileges, leases and permits****for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, ***." In addition, it authorizes the Secretary to make such rules and regulations as he may deem necessary for the use and management of Park System areas.

The latter Act furthers the 1916 Act in that it guides the Service as to how Congress wants it to administer the Concessions Program with the dual responsibility of preserving park values and providing for visitor enjoyment.

B. PURPOSE

The publication and release of this Guideline cancels the Concessions Manual which has been in use since March 27, 1979. It is a comprehensive reference source in that, to the extent possible, it contains all laws, regulations and policies in one place, thereby enabling us to eliminate all prior memorandums issued regarding policy or procedures. The publication of this Guideline will also supercede and cancel Special Directive 79-2 as the contents of that directive have been revised and incorporated herein.

The program authority for the National Park Service Concessions Program is vested in the Secretary of the Interior. This authority has been redelegated to the Director who has redelegated certain authorities to the Regional Directors who in turn redelegated certain authorities to the Superintendents. However, authority to change or deviate from approved Service policy remains with the Director.

C. HOW TO USE THIS GUIDELINE

The attached Guideline has been divided into the four sections listed below:

- SECTION I - Concessions Planning (Chapters 1 thru 4)
- SECTION II - Contract and Authorization Process (Chapters 5 thru 15)
- SECTION III - Concession Administration (Chapters 16 thru 34)
- SECTION IV - Index

Sections I and II are set up similarly, however, Section III has been set up a little differently since it contains a variety of subjects. The first chapter in Sections I and II contains the laws, regulations, policies and responsibilities relating to the section heading. In Section III, the laws, regulations and policies are contained in each chapter because of the diverse subject matter. In some instances, there may be no laws or regulations in which case we have so stated. We have used this approach so that everything about a particular subject can be found in one place. For ease of reading we have xeroxed lengthy quoted material directly from the source, i.e., laws were taken from the U.S. Code, regulations from the Code Of Federal Regulations. In several instances, some cross-referencing was found to be necessary but we have tried to keep it to a minimum.

The index is in the process of being developed and will be submitted at a later date. Attached at the end of this guideline is Appendix "A" which is a chronology or legislative summary of all laws pertaining to the concessions management function.

Comments concerning the contents or use of this guideline should be submitted to the Concessions Division (WASO) as questions arise.

Listed below are the Sections and chapters contained herein along with a brief statement of any changes. Most of the chapters were included in the previous Concessions manual or the contents therein have been issued separately by memoranda.

SECTION I - CONCESSIONS PLANNING

This section includes Chapters 1 through 4, all of which are new in their entirety. Chapter 3, subparagraph F, Feasibility Analysis, supersedes Special Directive 76-17, Cost and Economic Feasibility Analysis in the Planning Process, dated December 21, 1976.

SECTION II - CONTRACT AND AUTHORIZATION PROCESS

This section includes chapters 5 through 15. Chapters 5 through 7 incorporate the provisions of Special Directive 79-2 which is superseded and cancelled by the publication of this Guideline.

Chapter 5, Authority For Concession Authorizations. New chapter containing laws, regulations, policies and responsibilities relating to the concessions contracting process. This chapter incorporates and revises the role and function statements contained in Special Directive 79-2.

Chapter 6, Renewal Process For Concession Authorizations. Revised chapter to update the renewal process in accordance with delegation of contracting authority. New revised Fact Sheet language is included as Exhibit 1 to this

chapter. The Standard Contract Language (Exhibit 2) has been revised to incorporate those changes over the last several years which have already been transmitted by memorandum. Exhibit 3, the sample public notice, has been revised to omit the definition of right of preference in renewal in the next to the last paragraph. These revised languages should be used for all future contract and permit renewals.

Chapter 7, New Authorization Process. Chapter has been revised to incorporate delegation of contracting authority. New revised Prospectus language is included as Exhibit 1 to this chapter. This language should be used for all future new contracts or permits.

Chapter 8, Evaluation of Offers. New chapter.

Chapter 9, Execution and Distribution of Contracts and Permits. Revised to reflect execution authority for contracts and permits pursuant to delegation of authority.

Chapter 10, Contract Modification Documents. This chapter includes a section on Interim Letters of Authorization and Amendments and Extensions. This chapter has been completely revised.

Chapter 11, Contract Provisions. Paragraph A, Preferential Right to Additional Services, has been revised. Paragraph B, Possessory Interest, has been revised to reflect current Standard Concession Contract Language. Paragraph C, Subconcessions, has been revised to omit vending machines. Paragraph D, Terminations and Suspensions has been revised. Paragraph E, Disputes, has been revised to reflect current Standard Concession Contract Language and CFR provisions. Paragraph F, Sales and Transfers, was issued separately by memo on August 8, 1982; no changes have been made since that date.

Chapter 12, Vending Machines. New chapter.

Chapter 13, Commercial Use License. The contents of this chapter were issued separately by memorandum of June 7, 1983, but were not issued in guideline format. No changes have been made since that date except for the format.

Chapter 14, Cooperating Associations. This chapter is undergoing revision and will be published at a later date.

Chapter 15, Hostels. New chapter.

SECTION III - CONCESSION ADMINISTRATION

Chapter 16, Handicapped Access - New chapter. Includes the requirements of the Architectural Barriers Act and Title V, Section 504 of the Rehabilitation Act of 1973.

Chapter 17, Concession Facility Design and Construction - Has been extensively rewritten, updated and contains a chart on the Concessioner Design and Construction Process. Also, the reader is directed to design standards for lodging and food facilities that may be obtained from the Denver Service Center Concessions Branch.

Chapter 18, Rate Administration Program - Procedures for approving rates for campground accommodations were issued separately on May 24, 1983. No changes were made here. A new section on Hostels has been added to Method 1, Full Review of Similar Services. Method 4, Merchandise Pricing has been clarified to permit averaging different items of merchandise within a particular category. There is also a new section covering procedures to adjust rates to facilitate passing through utility charges. This was issued separately on June 8, 1983. The March 30, 1984, memo clarifying franchise fee calculation has been incorporated.

Chapter 19, Concessioner Review Program - Issued separately on September 8, 1982. Regional reporting date to WASO has been changed to December 15 of each year.

Chapter 20, Concessioner Review Program - Operational Performance - Issued separately on September 8, 1982. "Meaningful Deviation" has been clarified.

Chapter 21, Concessioner Review Program - Operational Performance Standards - Issued separately on September 8, 1982. Standard Elements pertaining to Reservations and Deposits have been modified to conform to policies contained in Chapter 29, Reservations and Conventions.

Chapter 22, Concessioner Review Program - Contract Compliance - Issued separately on February 23, 1983; no changes made.

Chapter 23, Insurance Program - A formula is now provided for the amount of liability coverage per accident or occurrence. Provisions for allowing the "no insurance"-option are clarified. The Insurance Review Checklist has been revised and is published in Chapter 22. A provision has been added whereby concessioners may have visitors sign a Visitor's Acknowledgement of Risk form for high risk activities, but may not require a waiver of liability. This was issued separately in July 1984.

Chapter 24, Financial Administration - No major changes to this chapter. Information has been updated and put into guideline format.

Chapter 25, Freedom of Information - Issued separately on October 8, 1982. No changes.

Chapter 26, Concessioner Operating and Maintenance Agreements - New chapter.

Chapter 27, Concessioner Personnel - Now includes sections on training and EEO and Affirmative Action. Section on EMPLOYMENT OF NPS PERSONNEL DEPENDENTS supersedes Director's memorandum of February 4, 1976, "Employment By Concessioners of the Spouses and Minor Children of National Park Service Employees.

Chapter 28, Handcrafts, Gifts and Merchandise - Policy expanded to cover all merchandise and includes a statement on Foreign merchandise. Chapter also includes a provision for appeals.

Chapter 29, Reservations and Conventions - Convention policy expanded cover reservations including individual visitors, commercial group tours and conventions. Policy supersedes Staff Directive 76-19, "Use of Concession Facilities for Conventions and Groups", dated November 11, 1976.

Chapter 30, Accepting Reduced Rates and Items of Nominal Value from Concessioners - Issued separately on October 22, 1983. Policy statement has been clarified to cover solicitation of gifts.

Chapter 31, NPS Concessions Employee Training - New.

Chapter 32, COMIS - Under development and will be issued at a later date.

Chapter 33, Other Operations

Paragraph A., Sales Tax - New

Paragraph B., Beverage Container Guidelines - Revisions issued September 21, 1982 - No change.

Paragraph C., Smoking in Public Places - Issued separately on September 28, 1980. No changes.

Paragraph D., Alcoholic Beverages - No change.

Paragraph E., Advertising - No change.

Paragraph F., Weights and Measures - No change.

Paragraph G., Trailer Villages - Policy revised for clarity. No substantive change.

Paragraph H., Scenic Viewers - New policy statement.

Chapter 34, Overview - Chapter is in the process of being developed and will be issued at a later date.

AUTHORITY FOR CONCESSIONS PLANNING

A. LAW

1. National Park Service Establishment Act, August 25, 1916;
39 Stat. 535; 16 U.S.C. 1 (Sec. 2 omitted)

SEC. 1. ***The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

SEC. 3. ***The Secretary of the Interior may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding thirty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented or granted to anyone on such terms as to interfere with free access to them by the public***

2. Concessions Policy Act, P.L. 89-249, October 9, 1965;
79 Stat. 969; 16 U.S.C. 20 et seq.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in futherance of the Act of August 25, 1916 (30 Stat. 535), as amended (16 U.S.C. 1), which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the

least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

3. National Environmental Policy Act of 1969 (NEPA), January 1, 1970; 42 Stat. 4321 et seq.

See NPS-12, Environmental Assessments and Statements.

4. Economic Recovery Tax Act of 1981 (ERTA), P.L. 97-34 August 13, 1981

Repeals earlier authorized preservation tax incentives and replaces them with a 25 percent investment tax credit and other provisions which provide incentives to encourage the preservation and reuse of historic buildings.

5. National Parks and Recreation Act of 1978

Requires the preparation and timely revision of general management plans for each unit of the National Park System.

6. National Historic Preservation Act of 1966, as amended

Section 106 requires consultation with the Advisory Council on Historic Preservation before any undertaking that would have an effect on a National Register property.

See NPS-28, Cultural Resources Management. Also, Section 111 allows any federal agency to lease or exchange a National Register property.

7. Archeological Resources Protection Act of 1979

Provides for the protection of archeological resources located on public lands.

See also NPS-28, Cultural Resources Management.

8. Specific Park Enabling Legislation

The enabling legislation for a park should be consulted as a part of any park planning effort.

9. Other Laws

The Denver Service Center (DSC) Legislative Compliance Check List may be consulted for other laws concerning cultural resources; land, air, and water; wildlife; transportation; and other laws which may affect concessions planning.

B. REGULATIONS, EXECUTIVE ORDERS, PROCEDURES

1. 36 CFR Part 51 - Concession Contracts and Permits

51.2 Policy

It is the policy of the Secretary, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

2. Executive Order 11988: Flood Plain Management
Executive Order 11990: Protection of Wetlands
and,
Final NPS Procedures for Implementing EO 11988 and 11990
45 Fed. Reg. 35916ff

The objectives of the above orders and procedures are to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and wetlands whenever there is a practicable alternative. Where flood plains or wetlands cannot be avoided, the procedures will focus on mitigation of the adverse effects of any action.

3. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)

40 CFR 1500 - 1508; 43 Fed. Reg. 55978 - 56007

4. DOI Regulations Implementing NEPA

516 DM 1 et. seq.

5. National Park Service Implementing Procedures for NEPA

516 DM 6, Appendix 7; 46 Fed. Reg. 1042

6. Executive Order 12003: Energy Policy and Conservation

Provides for preparation of energy conservation plans and goals for federal buildings, including government-owned buildings assigned to concessioners and "certain concession-owned" buildings.

7. Historic Preservation Tax Incentive Program

36 CFR Part 67 - (National Park Service) Historic Preservation Certifications; Final Rule

Historic preservation certifications pursuant to the Tax Reform Act of 1976; the Revenue Act of 1978; the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981.

26 CFR Parts 1 and 7 (Internal Revenue Service); Final Rule

Income Tax; Amortization of certain rehabilitation costs for certified historic structures.

26 CFR Part 1 (Internal Revenue Service); Proposed Rule

Ten percent investment tax credit for qualified rehabilitated buildings.

26 CFR Parts 1, 20, and 25 (Internal Revenue Service); Proposed Rule

Proposed regulations relating to contributions of partial interests in property for conservation purposes (easements).

8. Leases and Exchanges of Historic Property

36 CFR Part 18

Regulations to be used in offering National Park Service (NPS) historic property for lease.

Also see Special Directive 82-12 "Policy on Historic Property Leases and Exchanges" and NPS-38, "Historic Property Leasing Guideline".

9. Accessible Design Guidelines

36 CFR Part 1190

See Chapter 16 for additional information on accessibility guidelines and requirements.

10. Protection of Historic and Cultural Properties
36 CFR Part 800

Regulations published by the Advisory Council on Historic Preservation to implement section 106 of the National Historic Preservation Act.

11. Secretary of the Interior's Standards for Historic Preservation Projects

36 CFR Part 68

12. Other Regulations, etc.

Other regulations affecting specific concessions activities will be cited elsewhere in the Concessions Guideline. Other regulations affecting NPS programs are listed in the Denver Service Center Legislative Compliance Check List.

C. POLICIES

1. Management Policies Manual

a. COOPERATIVE REGIONAL PLANNING, Chapter II

...Informal cooperative planning and occasionally formal coordinated planning may be needed in many areas, including but not limited to:

-the provision of facilities and services for visitors within and outside the park, including those provided by National Park Service concessioners;

b. VISITOR FACILITIES, Chapter III

The Service will provide needed visitor facilities for the use and enjoyment of the park as identified in the general management plan and associated planning documents, commensurate with park purpose, objectives, the requirements of applicable laws, and Service policy.

OVERNIGHT ACCOMMODATIONS

The location and use of many parks is such that visitors need overnight accommodations in or near the park in order to enjoy their visit. Certain park uses, such as backcountry

use, may require overnight stays. Overnight facilities will be restricted to the kinds and minimum levels necessary to achieve each park's purpose consistent with the protection of park resources, and will be provided only when the private sector or other public agencies cannot adequately provide for them in the park vicinity. Overnight accommodations may vary from unimproved backcountry campsites to more substantial lodging, as appropriate.

c. COMMERCIAL SERVICES (Within Wilderness Areas), Chapter VI

Guide services for horseback trips, hiking, mountain climbing, boat trips and similar services designed to provide opportunities for the enjoyment of primitive and unconfined types of recreation or other wilderness purposes of the area are permissible under careful control by each park as to their nature, number and extent. Structures or facilities in support of such commercial services are not permitted within wilderness.

d. BACKCOUNTRY COMMERCIAL SERVICES, Chapter VII

Commercial touring use of the backcountry will be authorized as any other concession service--on the basis of need following appropriate planning and assessment of the impact on the environment.

e. PRIVATE ENTERPRISE OUT-OF-PARK, Chapter VIII

In considering the need for concession facilities in newly established parks or for the expansion of such facilities in existing areas, the Service is guided by the following policy.

If adequate facilities exist or can feasibly be developed by private enterprise to serve the park visitors' needs for commercial services outside of park boundaries, such facilities shall not be expanded or developed within park areas. The Service shall cooperate with State and local governments to develop the recreational region around major parks in a manner designed to meet the visitors' needs without degradation of the non-park environment or loss of quality of the visitor experience through uncontrolled and unregulated growth.

f. LOCATION AND CONTROL OF CONCESSIONS, Chapter VIII

In granting the privilege of a concession contract, any building program contained in the contract must be in concert with the appropriate approved plan for the area in consideration. It should be determined that:

- the use of the facility or service will enhance the use and enjoyment of the park without substantially resulting in impairment of park values;
- the facility or service is located where the least damage to park values will occur; and
- the facility or service is situated upon the smallest parcel of land practicable consistent with proper spacing and the preservation of aesthetic values.

(See Park Development Laws II-4, Design Quality and Control III-5, Overnight Accommodations III-8, Construction III-6, Utilities III-7, Wilderness-Commercial Services VI-5, Wilderness-Chalets and Concessioner Camps VI-9, Backcountry Commercial Services VII-12)

g. CONCESSION FACILITIES, Chapter VIII

The number of sites and the locations and sizes of the tracts of land assigned for necessary accommodations, as determined through the Service planning process, shall be held to the minimum essential for proper and satisfactory operation of the accommodations, consistent with proper spacing and preservation of aesthetic values. Moreover, such developments as are permitted shall be constructed so as to be as harmonious as possible with their surroundings.

All concession development shall be subject to compliance with the Procedures for the Protection of Historic and Cultural Properties promulgated by the Advisory Council on Historic Preservation.

D. RESPONSIBILITIES/ROLE AND FUNCTION

1. Washington Office (WASO)

The Concessions Division, WASO, provides policy and procedural guidance in the area of concessions planning and technical studies. Direction is given to the Denver Service Center Concessions Branch in terms of project priorities and review. Certain projects which are multi-regional in nature or have nationwide implications will be the responsibility of the WASO Concessions

Division, with the project to be conducted through use of the DSC Concessions Branch, a special task force, or contracted to outside sources.

2. Denver Service Center

The DSC Concessions Branch provides technical assistance and guidance in the areas of park planning, feasibility studies, economic analysis, market studies, facility design review, and operational review of concessions programs. The Branch has three sets of National Park Service "clients": DSC planning teams, regional offices/parks, and the Washington Office. Work is performed by the Branch, or as part of an interdisciplinary effort with other DSC, WASO, regional, and park personnel. The Branch may also serve as a contracting officer's representative for studies to be prepared by outside sources.

Procedures to follow in requesting assistance from the Branch can be found in Chapter 3, paragraph I.1.

3. Regional Offices

The regional role in concessions planning will vary according to the size and staff capability of the affected park area and according to the policies of each regional director. As a general rule, the regional staff serves also as staff to superintendents of smaller parks, but serves more in an overview role for larger parks. Planning requests may originate in either the park or the region, but in either event will be subject to definition and refinement by the regional office. The regional staff may prepare concessions plans or may secure assistance from DSC or outside consultants. A key regional role is to assist the superintendent in looking ahead in order to foresee early the need for future concession plans and to develop appropriate planning/contracting schedules.

4. Park

The superintendent is responsible for foreseeing the need for future concession plans and for taking the appropriate steps to assure their accomplishment. The superintendent or park staff will participate in the planning process, either as team members or as resource persons.

5. Approval Authority

If the plan is part of a DCP or GMP, the approval of the overall plan includes approval of its concessions component, and authorities are as set forth in NPS-2. Approval authority for a concessions plan which supports a contract or permit action is the same as the approval authority for the contract/permit itself (see Chapter 5 paragraph D). Other types of concessions plans will be approved by the original tasking authority.

CONCESSIONS PLANNING PROCESS

A. PURPOSE

The purpose of concessions planning is to guide and control the establishment and administration of commercial visitor services and facilities within a park area. In order to provide quality services at reasonable rates, concessions planning must be fully integrated into the National Park Service planning and decision-making process as it is implemented at all levels.

Concessions operations within a park must be viewed as a tool of management to be utilized to achieve the objective of that park. These objectives, and the actions taken to meet them, grow out of the overall park planning process and should be based on considerations such as visitor needs, the agency's ability to satisfy those needs, the resource itself and its carrying capacity. It is incumbent upon NPS to recognize legal and contractual obligations to the concessioner in order that he/she may have an opportunity to realize a reasonable return on investment. Without a reasonable margin of profit, visitor needs and services would be substantially compromised. As park objectives change, a corresponding revision in the concessions management program should occur to complement those objectives.

B. FUNDAMENTAL CRITERIA: "NECESSARY AND APPROPRIATE"

Within the framework of any concessions planning, a fundamental issue to be addressed concerns the determination as to what is "necessary and appropriate" for public use and enjoyment of a national park area as defined by the Concessions Policy Act of 1965 (Public Law 89-249).

It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

One of the primary difficulties in working with Public Law 89-249 lies in defining the terms "necessary and appropriate" so that they are compatible with environmental considerations, practical business management, local conditions, area visitation, and enabling legislation. Such factors tend to preclude a definitive system which would exactly fit every park situation and, in fact, suggest the need for a process which allows for specific area input, rather than a strict list of criteria.

The terms "necessary and appropriate" were not defined in the legislative history; however, it is reasonable to assume that Congress was drawing a parallel with the "use and preservation" mandate of the 1916 Act. Both the 1916 Organic Policy Act and the 1965 Concessions Policy Act place emphasis on the conservation and preservation of National Park System resources, while at the same time providing for their use in a wise and nonconsumptive manner.

For the purpose of carrying out the 1965 Act, the following definitions apply:

Necessary: required to meet the needs of the visitor/public.

Appropriate: compatible with the park's natural, cultural and/or recreational resource(s), recognizing the purpose of the established area.

C. THE PROCESS

The decision that a concession is "necessary and appropriate" is reserved to designated levels of management (see Chapters 1, ¶D5 "Approval Authority," and 5, ¶D "Responsibilities/Role and Function" for specific authorities) and must be consistent with approved plans for the park area. Like other park planning decisions, it is the logical outgrowth of a process rather than a set of rules. Affirmative decisions are documented in the Fact Sheet or Prospectus. Negative decisions are documented as required.

Exhibit 1 to this chapter is a sequence for planning commercial services and facilities. The sequence provides a systematic approach to considering factors which affect the necessity and appropriateness of a given service or facility. It is similar to the NEPA documentation process, tailored to include economic and business concerns relating to concession operations. The steps are followed in order; if a proposed concession service fails to "pass" the first filter, one would continue to the next. Such a failure would indicate that the concession service in question is either not necessary or not appropriate to the area.

Concessions Planning Process

SEQUENCE FOR
CONCESSIONS PLANNING DECISIONS

Proposed Service/Facility _____

Alternatives _____

FILTER PROCESS	SOURCE	POTENTIAL CONTACT
Step 1. What is the legislative background or subsequent regulations and policy which would affect the implementation of this service?	A. Organic Policy Act of 1916	Regional Compliance and Assistance _____
	B. Concessions Act (PL 89-249)	_____
	C. Enabling legislation	_____
	D. Legislative history	_____
	E. NPS Management Policy	_____
	F. Other	_____
Step 2. What is the area documentation which would influence implementation of this service?	A. General Management Plan (GMP)	Regional Chief of Planning _____
	B. Statement for Management	_____
	C. Outline of Planning Requirements	_____
	D. Development Concept Plan (DCP)	_____
	E. Environmental Assessment/Impact Statement (EA/EIS)	_____
	F. Transportation Study	_____
	G. Life/Safety Study	_____
	H. Other	_____
Step 3. Environmental Concerns. ^{1/} What impacts or effects would this service or the sites being considered have upon environmental concerns? Can they be mitigated?	A. Park Natural Resources Mgmt. Plan	Park and regional natural resources _____
	B. Endangered Species Act	staff _____
	C. Executive Orders 11988 and 11990; Floodplain Mgmt. and Protection of Wetlands	_____
	D. Other	_____

Concessions Planning Process

FILTER PROCESS	SOURCE	POTENTIAL CONTACT
<u>Step 4. Cultural Con-</u> <u>cerns.</u> ^{1/} What impacts or effects would this service have upon cultural resources?	A. National Historic Preservation Act, as amended B. Executive Order 11593, "Protection and Enhancement of the Cultural Environment" C. NPS-28, "Cultural Resources Management Guideline" D. Other	Regional Chief of Cultural Resources, or DSC Team Cultural Resource Specialist
<u>Step 5. Demand Analysis.</u> ^{2/} What is the demand for this service? Will this service enhance the park experience? Who wants it? Is there an alternative? Is it being provided outside the park?	A. Visitor Profile Statistics ^{3/} B. Public Involvement- Business, Environ- mental, User C. Market Analysis ^{4/} D. Enabling legisla- tion/GMP	A. Park, Region, Statistical Office B. Regional Public Affairs C. WASO, DSC or Reg. Concessions D. Regional Chief of Planning
<u>Step 6. Economic</u> <u>Feasibility Study</u> ^{5/}	A. Market Analysis (Step 5) B. Location/Site Analysis C. Refinement of Concept D. Financial Analysis	DSC Concessions Branch, Regional Office, Consultant, WASO
<u>Step 7. Operating</u> <u>Conditions and</u> <u>Considerations</u>	A. Condition of existing facilities B. Safety considerations C. Sanitation considera- tions D. Financial condition of concessioner E. Concession contract provisions/term F. Handicap access G. Special populations H. Use of historic structures	

Concessions Planning Process

FILTER PROCESS	SOURCE	POTENTIAL CONTACT
<u>Step 8.</u> What are further potential constraints for such a service?	A. Local and national interest groups	_____
	B. Congress	_____
	C. Environmental groups	_____
	D. Chamber of Commerce	_____
	E. Budgetary (NPS Appropriations)	_____
	F. Cost of Capital (availability and cost)	_____
	G. Labor Market (Census data, local business)	_____
	H. Location factors	_____
<u>Step 9.</u> Is the Service necessary and appropriate?	A. Approving authority.	_____

FOOTNOTES

- 1/ These concerns may be addressed twice if the site selection for a proposed facility is considered separately from the initial consideration of the proposed activity.
- 2/ There probably will be an informal indication of demand or proposed need which precedes and gives cause to go through this process. Step 5 is an in-depth analysis of this demand.
- 3/ Visitor Profile Statistics. Generally, the only visitation statistics available are counts. However, in some cases additional information may be available and is certainly helpful in planning. This would include: age, sex, income, size of party, length of stay, origin (i.e., zip code), other parks visited, what services used; further questions concerning opinions of services, additional needs, improvement of services could also be asked of the visitor to measure necessity.
- 4/ Market Analysis. A determination of visitor needs from the perspective of supply and demand. Generally, an inventory is made of existing services inside and outside of the park, and discussions are held with Chamber of Commerce officials and local businesses to determine if the available supply is meeting the demand. If ample supply exists in nearby locations outside of a park area, service inside the park is most likely unnecessary. Also gathered are relevant statistics, i.e., occupancy, number of visitors to the area, types of recreational activities, etc.
- 5/ Economic Feasibility Study. Along with the market analysis, location/site considerations are studied, the original concept(s) are then further refined, and a financial analysis is performed. Pro formas are prepared for the new proposals, projecting the profitability of an operation under predicted income and expense levels. Economic feasibility studies or a financial analysis are required prior to the issuance of a prospectus or fact sheet for a concession contract. See Chapter 3, Paragraph F for further discussion of economic feasibility studies.

NOTES

PLANNING PROCEDURES

A. GENERAL NPS PLANNING PROCESS

Congress is sometimes quite specific when writing the enabling legislation for a park area, which is then utilized by NPS in preparing a general management plan (GMP). The GMP delineates necessary and appropriate visitor and commercial services based on reasons the park was established as described in the enabling legislation. In other cases, management has little specific legislative direction in making these decisions, and must rely on general planning guidelines and procedures.

1. Summary: Planning for Units of the National Park System

The following excerpt from NPS-2 gives a clear and concise summary of the general planning process used by NPS to guide the establishment of services and facilities within a park area. A basic understanding of this process is essential prior to a discussion of concessions planning since (1) concessions planning is based upon NPS planning procedures, and (2) general NPS planning and concessions planning ordinarily need to be closely coordinated and integrated.

Planning for Units of the National Park System

Public Law 95-625, the National Parks and Recreation Act of 1978, requires the preparation and timely revision of general management plans for each unit of the National Park System.

For recently authorized areas, planning is initiated after an activation memorandum is prepared and distributed by the Office of Legislation. For other units, plans are scheduled and prepared as needed. The purpose of each NPS area is usually defined in its enabling law, presidential proclamation, or executive order, and documented in the statement for management. Planning is to achieve the purpose of the park by providing specific guidance for preservation, use, and development.

Planning begins with the identification of issues, problems, and objectives to be addressed in the plan. This process is begun by the park superintendent who, with assistance from region and Denver Service Center personnel, prepares a statement for management (SFM). The SFM is updated and reviewed every two years to assure that it reflects a current view of the park in its regional context.

The statement for management gives a concise description of the park's purpose and the way it is currently being managed, operated, and utilized; an analysis of influences on management and use; a status report on plans and studies underway and completed; major issues and problems; and the management objectives to achieve the park's purpose. The SFM does not contain decisions or prescribe solutions. It does provide park management with an assessment of conditions from which it can determine the nature and extent of needed studies, plans, and design.

The statement for management leads directly to an analysis of the plans and tasks that must be done to resolve issues and achieve objectives. Park, regional, and DSC personnel bring an interdisciplinary expertise into this task analysis during the preparation of the Outline of Planning Requirements (OPR) and its related Development/Study Package Proposals, or 10-238s. The OPR is a priority listing of the studies and surveys needed to provide the information base for planning and compliance and the plans and designs needed for the park. The 10-238s request programming and funding for the tasks during the next five years, and provide the details and justifications for tasks accomplishment.

Once a task is programmed and funded a task directive is prepared. This is a written agreement between the regional director, the park superintendent, and the person assigned to accomplish a task. Based upon the requirements of the 10-238, it sets forth the focus and scope of work, methodology and products produced, opportunities for public participation, responsibilities and talents required, and a schedule of completion dates and costs. The task directive is prepared and kept up-to-date by the office assigned to accomplish the task.

The major planning document for all parks is the combination general management plan/environmental document. It sets forth the basic philosophy for a park and provides the strategies for resolving issues and achieving identified management objectives usually within a 5-10 year time frame. The strategies presented in the GMP are those required for resource management and visitor use. Based on those strategies, any necessary development for efficient park operation, protection and use are identified. The assessment of environmental impacts and other required compliance documentation are included in the document.

The specific contents and instructions for preparing the plan are contained in the GMP chapter of NPS-2. The GMP may be fairly general or very specific depending upon the nature of the park, the planning issues, available information, and time and funding. In complex planning efforts, development concept plans and other more detailed planning efforts and studies may flow out of the GMP. If the plan is not very detailed, it may lead directly to design drawings and implementing actions without intervening steps. (Emphasis supplied)

The draft document is circulated to the public and other agencies for review and comment. After a minimum review period of thirty days, the regional director reviews the environmental impacts, reassesses nonenvironmental factors, evaluates public and agency comments, and modifies the proposal as necessary. After NEPA and other compliance requirements have been met, the GMP is approved, printed, and distributed.

Implementing plans are prepared for subjects that may not be adequately covered in the GMP or that are prepared subsequent to it. Examples are:

- development concept plans, for more detailed planning guidance in a specific area of the park
- wilderness plans, where specifically required or where such plans are consistent with general guidance for wilderness studies contained in the Wilderness Act of 1964
- land resource protection plans, prepared for parks which contain land not owned or directly administered by the National Park Service, identifying methods by which these lands will be protected (less-than-fee and fee)
- concessions management plans
- interpretive prospectuses
- special planning efforts or studies that may be required to resolve major issues (Emphasis supplied)

2. Visitor Use and Concessions Operations

The following excerpt is from the chapter on general management plans, concerning the visitor use element of a GMP and subsequent implementing plans.

The visitor element of the GMP includes decisions on issues relating to the desired visitor experience and on the activities and levels of use that will be accommodated. Visitor use strategies address, as necessary, such topics as access and circulation, information and orientation, interpretation of resources, recreational and cultural activities, and visitor services, including those provided by concessioners or entities outside of park boundaries. Existing visitor activities and services to be retained, expanded, restricted, or phased out are described, as well as new activities to be provided.

Appropriate use and facility capacities are established in this discussion, based on resource limitations, desired park experiences, and energy and safety considerations. The determination of acceptable levels and types of uses and the means of accommodating them should draw heavily on the capacity analysis for natural and cultural resources.

The anticipated visitor experience and the types of activities and services that will be accommodated are described in this narrative, generally by geographic area. Strategies to ensure public health and safety are determined. In a GMP for a large or complex park, a chart may be useful to summarize existing uses and services to be retained in each park area, new uses and services to be added, and uses and services to be restricted or eliminated.

The GMP may address issues regarding the provisions of necessary visitor services by the private sector, either outside the park or through adjustments in existing concession operations. Such planning may require information on existing operations, length and terms of contracts, ability to provide contracted services, availability of interested profit and nonprofit corporations, and potential for development outside of the park by the agencies or the private sector. Any decision for an increase or decrease in services by the private sector or concessioners must be realistically obtainable and supported by sufficient economic analysis to show that there is reasonable opportunity to realize a profit. The need for economic analysis is particularly important when a decision calls for substantial investment by the concessioner or for a reduction in the scope of services that would reduce the concessioner's economic base. The GMP should call for a concessions management plan (along with development concept plans) when the park requires more detailed decisions to tie the concessions strategies of the

GMP to the legal and practical considerations involved in obtaining needed visitor services from private enterprise.
(Emphasis supplied)

B. ROLE OF PLANNING IN CONCESSION CONTRACTING

1. The Planning Phase

The process which results in the execution of a concession contract or permit can be divided into two phases: (1) the planning (and operations review for renewal considerations) phase, and (2) the contracting phase. In the first phase, a rationale is developed for determining whether a concession should or should not be authorized (or renewed). If it is decided it should, the second phase begins with the development of a Prospectus or Fact Sheet leading to the execution of a contract or permit.

In the planning phase, it must be determined if a concession operation is (or continues to be) necessary and appropriate to the mission of the park. The planning sequence as outlined in Chapter 2, must be well thought out and documented, with this process starting well before the proposed implementation date. If capital investments are proposed, an economic feasibility study must be prepared. If a renewal of an existing contract or permit is being examined, a review of the existing operation is also required. Simply stated, the planning phase presents a case for authorizing or renewing a contract/permit, or documents why the proposal is unnecessary, inappropriate, and/or infeasible.

2. Concession Planning/Contracting Flow Chart

Exhibit 1 is a flow chart that provides a general "macro" view of the requirements, procedures and responsibilities for both the planning and the contracting phases of the concession contracting process. As such, it can serve as a handout when explaining the process to interested parties. More detailed check lists are provided in Chapter 4.

C. CONCESSIONER PARTICIPATION IN PLANNING

Input by a concessioner into NPS planning efforts should be in the form of assistance in basic data collection and in review as a member of the public. Concessioners provide visitor services at our request. Whenever NPS considers making changes in the services to be provided, it is valuable as part of the data collection effort to be able to deal openly with concessioners to determine possible effects and to explore alternatives for mitigation of adverse effects. As an example, working with a concessioner when removing and replacing facili-

ties could lead to alternatives which would not otherwise be considered. It must be clear that NPS makes the decisions, and that those decisions are based on more than economic reasons.

In redefining the concessioner's role in planning, great care must be taken to define the extent of participation. A concessioner needs to be able to discuss, plan, argue, provide information, and suggest alternatives freely and openly . . . this is a part of data collection. They must, however, be excluded from the actual decision-making process. They should have only the responsibility to participate in data collecting, not the authority to participate in decision making.

D. CONCESSION PLANNING SUMMARY

1. Elements in the Concession Planning Process

Concessions planning may be performed at any level. For example, planning for a simple permit renewal can and should be done at the park level, while planning for a controversial, complex and/or major concession contract should be carried out by professional planners and concession analysts in the regional office and/or Denver Service Center (DSC).

The elements of a concessions planning effort can include a number of actions and products, in different combinations depending upon the problem, proposal or contract action to be studied, and what prior planning has been completed.

These elements may include:

- general management plan
- development concept plan
- park-wide concessions management plan
- developed area concessions management plan
- market analysis (visitor use studies)
- economic feasibility study
 - market analysis
 - location/site analysis
 - financial analysis
- operational reviews
- historic structures review
- design review

From this list, it can be seen that "planning," as considered in this guideline, potentially includes several financial, operational and design oriented studies, as well as broader planning efforts in the development of

"plans." These tools can also be used as independent means to assist in resolving problems or developing proposals.

2. Task Directives

A task directive should be prepared as the first step of any planning effort. All concerned must be in agreement as to what the problem or proposal is, what steps will be taken, and which planning tools will be used in resolving the question at hand. Task directives can be prepared by park, regional or DSC personnel, and are usually approved by the regional director. A considerable amount of time may be devoted to developing and reviewing the task directive. However, this effort is a useful exercise in and of itself in understanding the problem and how to approach it. It will also help in avoiding misunderstandings, and as such, contribute considerably towards a successful planning effort.

E. CONCESSIONS PLANS

A concessions plan is an action document to provide a park further direction not specified in a GMP for the management of its concession activity. A concessions plan may be done independently or as a component of other plans (i.e., GMPs and DCPS). It may be park-wide in scope, or a separate plan may be prepared for each developed area, perhaps as a means of implementing the concession activity portion of a DCP. In the latter case, a park-wide plan should be prepared to provide consistency in concessions planning for the park.

When a concession plan is prepared independently of another planning effort, an integrated process must be pursued which considers those planning requirements outlined in NPS-2 and NPS Management Policies. Integrating and coordinating concessions policies and procedures with established NPS planning guidelines and goals and park planning documents is fundamental to the formulation of a comprehensive concessions plan.

In the GMP portion of NPS-2 it states that the "GMP should call for a concessions management plan (along with development concept plans) when the park requires more detailed decisions to tie the concessions strategies of the GMP to the legal and practical considerations involved in obtaining needed visitor services from private enterprise." This would also be possible when a park is developing DCPs.

There is no set format for a concessions plan. However, the following elements should be considered:

- A statement covering the historic perspective of concessions activities in the park.

- A statement of purpose of each major service.
- A statement identifying the role of concessions services in relation to other services within the park.
- A statement covering an analysis of existing, planned or potential visitor services and facilities outside the park area.
- A statement explicitly covering the rationale for the recommendations required under the fundamental criteria (necessary and appropriate).
- A statement describing how proposed new/expanded/reduced/altered concessions programs will be implemented (description, timetable, cost factors, effect, etc.). This element should include any relevant information useful in documenting proposed actions for all interested parties.
- A statement describing contracting methods and timetable, and identifying need for policy exception, if applicable.

In support of such statements, visitor use, demand and/or market studies may be required. In all cases where a capital investment is to be considered, a financial feasibility study should be done as a part of the CMP.

In summary, a concessions plan may be necessary to implement a GMP or DCP, or to provide a rationale for other concessions management decisions within a park. Concessions plans are usually prepared on a park-wide basis, however, in very large parks, the plan may include sections on separate areas within a park, or the park may choose to prepare separate implementing concessions plans, perhaps in conjunction with the development of DCPs. A concessions plan is an action plan -- an implementation plan. As such, it must be useful, understandable to all concerned, realistic in its course, and complementary to the park GMP and DCPs.

F. FEASIBILITY ANALYSIS

Once a concession facility or service concept is developed, it is necessary to analyze the feasibility of the concept before approving it. It may be an attractive idea, but will it work financially? Is it capable of producing a quality service and at the same time provide the concessioner with a reasonable opportunity to make a profit? These answers are important to the park manager, because if the "profit line" suffers, the concessioner's ability to service his/her debt, replace furnishings and equipment, and subsequently provide an acceptable level of service will also suffer.

To better estimate a concessioner's opportunity for profit, an economic feasibility study or a financial analysis of each proposed new concession operation must be accomplished before a prospectus or fact sheet may be issued. (This applies to contracts only.) If such a study is not warranted, the record must show the reason why it is not needed. If the concessioner has performed a similar study, (and do not automatically assume that it has), request a copy for comparison purposes.

Feasibility studies include an analysis of the concessioner's potential market, the effect of location/site considerations, and a financial analysis. It may be a relatively simple study, or a very lengthy one depending upon the complexity of the proposed concession operation.

1. Market Study

The purpose of a market study is sometimes misconstrued as solely being a sales effort to increase a concessioner's business. "Marketing" studies for this purpose are conducted by marketing and sales directors of hotels and resort areas. The primary use of "market" studies by the Service is to determine visitor needs from the perspective of supply/demand and competition. It provides a definition of the market in terms of numbers and types of visitors to the area (demographics), latent demand, occupancies, competition, local market indicators and trends, etc. From this information, one can develop a better understanding of how a specific type of service may be received by a park's visitors.

2. Economic Feasibility Study

An economic feasibility study, as considered in this guideline, has several components:

- a market study, as discussed above
- a location/site analysis
- concept refinement
- financial analysis

Outside a park, location/site analyses are conducted by businesses in search of a general location or specific site for a new facility. Inside a park, such an analysis is useful in determining the best site within a designated development area for a specific facility. Considerations include accessibility from primary roads, visibility, traffic flow, parking, signage, availability of utilities, park zoning requirements and restrictions, etc.

Following the market study and location/site analysis, it may be necessary or desirable to refine the original development proposal. For example, it may be determined that the style, type or level of service to be

offered should be changed, or that the long-term viability of the proposed service is seriously questionable. This step in the process allows for a second look at the original idea before proceeding to the financial analysis.

The financial analysis portion of the study generally includes the development of pro forma financial statements, with supporting cash flow, return on investment (ROI), break-even, etc., analyses. A pro forma is a projection based on income and expense assumptions. It provides management an idea of how viable a concession operation would be under various business conditions. The pro forma is accompanied by a list of notes detailing the assumptions used in developing the pro forma. From this information, proposals can be evaluated to determine which combination of factors will lead to a concession operation which will serve the public, and also provide the concessioner with a reasonable profit. A word of caution -- a pro forma is only as good as the validity of the assumptions used to prepare it, and as such, the entire document requires careful, critical scrutiny by all reviewers.

The pro forma, together with the market location, and other financial data included in the study, are then analyzed to determine a recommended course of action.

3. Cost-Effectiveness

The NPS Planning Process Guideline (NPS-2) requires "innovative, practical, and truly cost-effective solutions to the issues" contained in general management plan proposals and alternatives. Emphasis must be placed upon consideration of development costs and economic feasibility in selecting from alternative proposals those which are economically viable and defensible. The evaluation of concession proposals should include construction cost estimates for NPS support services, as well as concessioner construction. NPS operating costs should also be estimated as well as any other costs resulting from natural resource, pollution, noise or other considerations. This overall cost analysis is an important element in the final consideration of a concession proposal.

G. OPERATIONAL ANALYSIS

An in-depth review of a concessioner's operation would be useful prior to the renewal of its contract or when serious operational problems appear to be evident. This can be accomplished through use of WASO or regional concessions personnel, field concessions analysts with particular types of expertise, the DSC Concessions Branch, or an outside consultant. Through such a review, information can be gathered for use in determining future visitor needs, the effectiveness of existing programs, and future contract requirements. It may also be possible to determine if changes in operating procedures might enhance the concessioner's financial health.

H. USE OF HISTORIC STRUCTURES AND SITES

1. NPS-28 PROVISIONS

Any request by a concessioner for improvement, modification, or extensive maintenance on a structure or site that is considered of historic value should be processed within the compliance provisions of Section 106 of the National Historic Preservation Act. Additionally, NPS-28 requires that all structures or structural remains over fifty years old shall be afforded the same considerations that are required for recognized historic structures. The above compliance is generally completed concurrently with the compliance procedures of the National Environmental Policy Act of 1969 (NEPA).

The following provisions from NPS-28 address concession agreements and the management of concessions in historic structures:

Concession Agreements

The Concessions Management Act (P.L. 89-249) establishes a system for providing for public accommodations, facilities, and services that are necessary and appropriate for public use and enjoyment of the park. Under these provisions, the Secretary is authorized to contract for those services he deems desirable for park visitors. These contracts could permit concessioner use of historic structures. Further, improvements may be eligible for tax relief under the provisions of the Economic Recovery Tax Act of 1981. The concessioner should be advised to seek legal counsel on specific application for tax relief.

Management of Concessions in Historic Structures

Many concessions within the park system operate in historic structures. Those structures that are under the jurisdiction and control of the National Park Service, or in which the Service has a legal interest, shall be located, inventoried, evaluated, and nominated to the National Register in accordance with Section 110 of the National Historic Preservation Act (amended 1980).

In general, such structures shall be managed in accordance with the mandates found in chapter 5 of the "Management Policies" and with the guidelines presented in NPS-28.

The following specific precautions with respect to these structures are required:

- Design compatibility criteria found in NPS-28 apply to additions and alterations to existing historic structures and to construction of new facilities adjacent to them or within a historic district.
- Interior finishes, elements, and fixtures are to be evaluated for their significance. If they are significant and are to be preserved, a preservation program will be developed.
- NPS-owned furnishings must be evaluated for their historic significance; if found to be significant they will be accessioned and catalogued into the park's museum collection and preserved as required. Adequate storage and curation are to be provided if they are left in a historic structure or it is necessary to remove them.
- Maintenance agreements that account for any special needs of the historic structure should be incorporated in the contractual arrangement between the National Park Service and the concessioner.
- Fire detection/suppression and security systems required for public and structural safety shall be designed to be as unobtrusive as possible and located to result in minimum impact or alteration upon the structure while still meeting applicable codes and being effective.
- All proposals for concessioner projects, whether initiated by the concessioner or the Service, are to be submitted to regional cultural resources specialists and concessions management specialists for review.

NPS-28 permits construction of contemporary structures in historic zones, provided that:

The construction of contemporary structures, including additions to historic structures, in historic zones, or adjacent to or in visual or physical association with historic structures shall be in harmony with the existing historic structures. The contemporary structures shall be of modern design that neither duplicates nor mimics the adjacent or associated

historic structures but rather blends with the historic structures.

In addition to the above considerations, it should be recognized that in some instances, too much may be required in terms of maintaining or restoring the historic integrity in a structure, to the point of precluding a concessioner's ability to make a profit. The alternatives are to modify the operation or to relocate or abandon the project.

2. Historic Preservation Investment Tax Credits

The Economic Recovery Tax Act of 1981 revised earlier authorizations of tax incentives for the rehabilitation of historic buildings. Special investment tax credits (ITC) are now possible for qualified rehabilitation of certified historic structures.

Rehabilitation costs must exceed the greater of \$5,000 or the adjusted basis of the property (cost of the building plus capital improvements less accumulated depreciation). Concessioners are considered lessees, who are qualified to receive the tax credit, if the remaining term of the lease (concession contract) on the date the rehabilitation is completed, is at least 15 years.

A building may be certified by the Secretary of the Interior as historic if (1) it is located in the National Register of Historic Places, or (2) it is located in a registered historic district and the Secretary certifies that the building is of historic significance to the district. Many concessioner buildings fall within one of the three age categories, and if renovation is contemplated, could benefit greatly from the ITC program.

Regional National Register Programs offices and chiefs of concessions, or the DSC Concessions Branch, can provide additional information on this program.

3. Leases and Exchanges of Historic Property

Title 36 CFR Part 18, "Leases and Exchanges of Historic Property", Special Directive 82-12, "Policy on Historic Property Leases and Exchanges", and NPS-38, Historic Property Leasing Guideline, provide regulation, management policy, and guideline in offering National Park Service historic property for lease and for proposals for negotiated leases, and for exchange of property.

See NPS-38, for a discussion of factors to consider when determining which type of authorization, concession or historic property, is applicable to retail commercial activities which might be located in historic properties. Generally speaking, historic properties will not be leased if "it is determined that the use(s) proposed are 'necessary and appropriate for public use and

enjoyment of the national park area' under the Concessions Policy Act of 1965 (16 U.S.C.20)." Refer to the Associate Solicitor's memorandum and accompanying discussion found in NPS-38 for situations involving existing preferential rights.

I. DSC CONCESSIONS BRANCH

1. Concessions Assistance Requests

Concessions-related planning performed by the DSC Concessions Branch will generally focus on either (1) concessions plans, (2) planning for new commercial visitor services and facilities, or (3) planning for renewal (including expansion or reduction) of existing authorizations. The Branch will prepare a planning document, or a technical (i.e., feasibility analysis, market study, operations review) report to be used in a planning effort. Requests for assistance originate at a park, a regional office, the Washington Office (WASO) or one of the DSC teams.

Requests from regions and parks are usually initiated through an informal Concessions Assistance Request (Exhibit 2) from the regional office to the Chief, DSC Concessions Branch. This informal request may be a result of a 10-238 planning effort. Other times it is a direct response to concessions contracting, operational or planning need. A task directive is then developed including legislative and planning history, documents relevant to the proposed study, a problem statement, proposed products, methods and responsibilities, programmed funding, and participants in the study. The directive may be drafted by either the regional office or the DSC Concessions Branch. It is finalized by the Branch, formally reviewed by the DSC Chief of Professional Support, park superintendent, and the WASO Concessions Division, and approved by the regional director.

Requests from DSC teams are usually initiated on a more informal basis because of the proximity of the teams, and finalized by a memorandum from the appropriate assistant manager. Regional chiefs of concessions are kept advised by the DSC Concessions Branch of these projects.

Funding of Branch participants in these studies normally comes from the Branch (which is WASO base funded), or as part of a larger planning effort (GMP, DCP, etc.). Regions and parks pay only for their direct participation in the study.

2. Priorities

Requests may conflict between the General Management Plan/Development Concept Plan (GMP/DCP) priority system established by WASO, and the concession

contract renewal process. Therefore, it becomes incumbent to establish a procedure for integrating these two systems of priorities.

The establishment of priorities for scheduling concessions-related planning will be based upon the following guidelines:

(1) General management plans, development concept plans, and new area studies requiring concessions planning input will be in accordance with the Servicewide priority sequence established by WASO and scheduled by the Manager, DSC.

(2) Requests for concessions contract-related planning or analysis may be originated by regions or the WASO Concessions Office and submitted to the Chief, Concessions Branch, DSC, with copy to WASO Concessions. In cases of potential conflict with other contract-related planning, the assignment will be discussed by the Branch chief with the WASO Concessions Division and the regional concessions chief, with priorities established by WASO Concessions.

(3) Requests for review of architectural plans and drawings prepared by a concessioner will be submitted by the regional director to the DSC manager. The appropriate DSC assistant manager will include the DSC Concessions Branch in the review of the plans and drawings.

(4) When conflicts arise between planning priorities established by the GMP/DCP process and those established by the DSC Concessions Branch, resolution of said conflicts will be by the Chief, Concessions Division, WASO, after appropriate consultation with the Associate Director, Planning and Development.

3. Design Review

The DSC Concessions Branch participates in the DSC review of designs prepared by concessioners or their architects and submitted by regional offices to DSC for review and comment. The process for submitting designs for DSC review is found in Section III Chapter 17.

CONCESSIONS PLANNING/CONTRACTING FLOW SCHEDULE

Example Dates (Hypothetical)

January 1, 1983	1. Planning phase is initiated as a result of: General Management Plan (GMP) or other planning effort for a park; or an independent concessions planning effort, or Planning effort in advance of expiration of an existing authorization (concession contract or permit) 2. Concessions planning criteria (legal, policy, planning, environmental, cultural, demand, feasibility, etc.) are considered, and In instances involving potential renewals, an in-depth review of the concessioner's previous years' performance is conducted; and a written intention to renew is requested from the concessioner. 3. Planning generally commences about two years prior to new authorization (one year if involving expiration of short-term permit; perhaps longer than two years if part of GMP process), and Is the responsibility of the park, with assistance of regional office (and Denver Service Center in some instances).
October 1, 1983	The above tasks and an environmental assessment are completed. For a renewal, a large amount of background information must be assembled. See Section II Chapter 6.
December 1, 1983	Decision is made to authorize concession activity. (See Chapter 5, ¶D for decision authority)
January 1, 1984	The development of a Prospectus (New Authorizations) or a Fact Sheet (Renewals) begins.
April 1, 1984	A public notice announcing proposed concession operation is published in local newspapers or the "Federal Register" for 60 or 90 days for interested parties to submit offers. (Following dates based on 90-day period.)
July 1, 1984	Evaluation of offers begins.
August 1, 1984	Regional director notifies applicants in writing as to the selection, and negotiations begin with successful applicant.

Planning Procedures

September 1, 1984	Proposed contract is finalized and sent to successful applicant.
October 15, 1984	Contract is sent to Congressional committees for 60-day review period.
December 15, 1984	Regional director signs contract.
January 1, 1985	Contract in effect.

Date _____

CONCESSIONS ASSISTANCE REQUEST

Concessions Branch, DSC

1. Park or Subject: _____
2. Proposed Task(s): Feasibility Study _____ Market Study _____
Design Review _____ Other _____
3. Target Completion Date _____
4. (a) Concessioner _____ Location _____
Contract Requirement? _____ Contract Expiration Date _____

(b) GMP/DCP Project? _____ Planning Deadlines _____
Concessions project must: precede ____, follow ____, be conducted
concurrently _____

5. Region/Park will provide the following data and assistance:
6. Scope of Work Required (Provide enough information to permit WASO and DSC
to understand nature and complexity of project.
You need not submit a detailed or final task state-
ment. A task directive will be prepared later.)
7. Other Comments

Requester _____

Send request to:
Chief, Concessions Branch
Denver Service Center/PC

Title _____

cc: WASO Concessions

Park/Office _____

TRANSITION FROM PLANNING TO CONTRACTING

A. NEW COMMERCIAL VISITOR SERVICES AND FACILITIES

1. The Planning Phase

The planning of new commercial visitor services and facilities begins as a part of a GMP or DCP planning effort, or because of a discerned visitor service need on the part of the general public or park management. As part of the process used to determine if the proposed service is "necessary and appropriate" to the mission of the park, legislative, policy, environmental, cultural resource, economic, visitor demand, and outside influence criteria are considered (see planning criteria check list, Chapter 2).

Whether the proposed service is a small, simple operation or a large, complex resort, the park must be quite certain that it is necessary, appropriate and economically feasible. These determinations are accomplished during the planning phase prior to the development of a Prospectus, and documented in concession plans, DCP's, supporting studies and environmental assessments or statements.

2. Concessions Contract Planning Check List (New Services)

Exhibit 1 is a check list to assist the park through this process. It provides a sample timetable and lists actions and procedures to follow. If the decision is made during the planning phase to seek a concessioner, the check list can continue to be used while following the contracting procedures in Sec. II.

B. RENEWAL OF EXISTING CONTRACTS/PERMITS

1. Planning and Operational Review Phase

The planning phase for renewal of existing authorizations should begin approximately two years prior to the expiration of a concession contract, and generally a year before the expiration of short-term permits. The renewal consideration provides an opportunity to formally review the necessity and appropriateness of the existing concession operation and its components, as well as existing concessions problems, if any, and concessioner performance. This is a most appropriate time to ask hard questions about the role of concessions in providing services to the park visitor, as well as the impact of concession services and facilities on park resources. The sequence list in Chapter 2 can be used as a guideline in this review.

The reviewer should begin by carefully reviewing the concessioner review program in general (Section III Chapters 19-22), and the specific evaluations performed to date of the park concessioner.

As a part of this review, operational conditions and problems should be addressed. Should existing concession facilities be expanded or reduced, and if so, will they still provide adequate visitor services and be financially viable? What are the needs for major improvement in safety, handicapped access, structural condition, decor, furnishings and fixtures, etc.? What will they cost and who should pay for them? What changes in operating procedures might increase visitor satisfaction, improve concessioner profitability, improve safety and sanitation, etc.? What concession-related adaptive uses can be made of an historic structure?

During this period, input should be sought from interested parties, including the concessioner. Also, at this time, the concessioner should be requested to advise the NPS in writing of its intention to renew or not renew its contract or permit.

Based on this examination, the park should document its decision whether the concession operation is necessary and appropriate, as it exists or with certain conditions or changes, or is not. Also, it should determine whether any of the park's planning documents should be revised.

About one year prior to contract expiration, the park or region commences development of a Fact Sheet which spells out to the business community the terms under which the National Park Service intends to negotiate a renewal concessions contract. Concurrently, development begins on evaluation criteria against which concessioner proposals will be measured. The Fact Sheet is formally published about eight months prior to contract expiration, in order to meet the legal and procedural requirements for selection, review, approval, etc.

Thus, the authorization renewal process should commence two years before expiration, identify decisions which must be made in order to produce the Fact Sheet, as provided for in Section II Chapter 6.

2. Concessions Contract Planning Check List (Renewals)

The check list at Exhibit 2 has been prepared to assist the park through the authorization process. It provides a suggested timetable and lists actions and procedures to follow. Refer to Section II for detailed instructions beginning with the preparation of the Fact Sheet.

Transition From Planning To Contracting

NEW AUTHORIZATION

CONCESSIONS CONTRACT(PERMIT) PLANNING CHECK LIST

DUE DATE (Hypothetical)	DATE DONE	PERSON RESPONSIBLE	ITEM
Approximately two years prior to possible authori- zation; longer if part of GMP process	_____	_____	Planning phase underway as part of GMP or DCP planning effort, or as independent action.
	_____	_____	Consideration of planning criteria
	_____	_____	Input from public solicited.
October 1, 19__	_____	_____	Completion of above items
	_____	_____	Completion of environmental assessment.
December 1, 19__	_____	_____	Decision made to either proceed or not proceed with concession authorization. (See Chapter 5 1D for authorities)

January 1, 19__ (one year prior to proposed authorization)	_____	_____	Initiate authorization phase by drafting (in red) the prospectus and contract, and draft criteria for evaluation of offers.
January 25, 19__	_____	_____	Red draft transmitted to region for review if prepared in park.
February 25, 19__	_____	_____	Region reviews and discusses red draft with park. When both park and region concur with contents of red draft, proceed with typing in final. (NOTE: If substantial changes are made to standard contract language, region should send memo to WASO requesting deviation from policy approval before typing in final.)
March 19__	_____	_____	Prospectus typed in final.
	_____	_____	Prepare public notice. The proposed press release and contents of the prospectus, including the proposed contract, should be con- curred in by the regional solicitor in writing.

Transition From Planning To Contracting

DUE DATE	DATE DONE	PERSON RESPONSIBLE	ITEM
			Immediately following SOL concurrence, advance copy of prospectus sent to Minority Business Development Agency (MBDA) (formerly OMBE) and to the Congressional delegation for the state(s) involved.
April 1, 19__			Region issues public notice and sends a copy of the release and prospectus to all on the mailing list.
			Region sets up evaluation panel at the beginning of proposal period. Participants may be from the park, other offices and WASO, if needed.
July 19__			After the proposal period, offers are evaluated utilizing the evaluation criteria established in the prospectus.
August 1, 19__			Regional director notifies applicants in writing as to the selection.
			Negotiation period with successful applicant ensues. Both regional and park staff should participate.
September 1, 19__			Region finalizes proposed contract and forwards original and two tissue copies through the superintendent to the successful applicant for signature.
			Superintendent returns contract to region after it is signed by applicant.
			Region may execute contract at this point if it is for less than 5 years and grosses less than \$100,000.
October 1, 19__			If over 5 years or \$100,000., region transmits three copies of signed contract to WASO for transmittal to Hill. WASO should be furnished a copy of the evaluation document.
			WASO prepares transmittal letter to Hill for the 60-day review period and forwards contract through the Secretary's Office to Hill. WASO Concessions will advise region by phone when 60-day review period is up.

Transition From Planning To Contracting

DUE DATE	DATE DONE	PERSON RESPONSIBLE	ITEM
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December 15, 19__	_____	_____	After the 60-day waiting period, region assigns a contract number to contract and regional director executes contract. Regional office then distributes contract as follows:
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1. Original retained by region.
2. One executed carbon bearing original signatures is sent to the concessioner.
3. One executed carbon bearing original signatures is sent to WASO.
4. Duplicated copies of contract sent to regional finance office.

Transition From Planning To Contracting

RENEWALS

CONCESSIONS CONTRACT PLANNING CHECK LIST

DUE DATE	DATE DONE	PERSON RESPONSIBLE	ITEM
January 1, 19__ (Two years prior to expiration of authorization; one year compressed schedule in instances of short-term permits)	_____	_____	Initiate Planning Phase of the renewal process.
	_____	_____	A. Begin consideration of planning criteria See Chapter 2.
	_____	_____	B. Begin in-depth review of concessioner's previous years' performance.
	_____	_____	C. Solicit input from public, including concessioner.
	_____	_____	D. Request intention to renew from concessioner. Received _____.
	_____	_____	E. Begin building appraisal if government buildings assigned to concessioner.
October 1, 19__	_____	_____	Completion of above Items A and B.
	_____	_____	Completion of environmental assessment.
December 1, 19__	_____	_____	Decision made to either proceed with renewal or discontinue concession operation.
December 15, 19__	_____	_____	Building appraisal completed.
	_____	_____	Current rate schedule and available following year rate schedules obtained.
	_____	_____	Current schedule of possessory interest assets received from concessioner (if applicable).

January 1, 19__	_____	_____	Park initiates authorization phase of renewal process by drafting (in red) the fact sheet and contract, and drafts criteria for evaluation of offers.
February 1, 19__	_____	_____	Red draft transmitted to region for review.
	_____	_____	Region reviews and discusses red draft with park. (NOTE: At this point, if substantial changes have been made to the standard contract language, a memorandum should be prepared and sent to WASO requesting approval of the deviations made.)
March 15, 19__	_____	_____	Fact sheet typed in final.

Transition From Planning To Contracting

DUE DATE	DATE DONE	PERSON RESPONSIBLE	ITEM
	_____	_____	Prepare public notice (original and four copies). Public notice should be signed by regional director. The proposed notice and contents of the entire fact sheet package should be concurred in by regional solicitor in writing. (NOTE: A copy of the solicitor's concurrence should be forwarded with the public notice to the Chief, Administrative Services Division [WASO].)
	_____	_____	Immediately following SOL concurrence, advance copy of the fact sheet sent to the Minority Business Development Agency (MBDA).
April 19__	_____	_____	Region prepares final fact sheet package for transmittal to existing concessioner. Region holds this package until WASO Concessions Office calls advising that public notice has been published.
	_____	_____	When public notice is published in the "Federal Register," for the 60-day response period, WASO informs region by phone to send the existing concessioner the fact sheet package on that day.
	_____	_____	WASO sends a copy of the public notice to the existing concessioner and all others on the mailing list.
	_____	_____	Region sets up evaluation panel at the beginning of the 60-day response period. Participants may be from the park, other offices, and WASO.
	_____	_____	If the existing concessioner submits the only offer, evaluation by panel may be waived, and evaluation is performed by the regional concessions office. Region should arrange for a panel evaluation, however, in the event of more than one offer.
June 19__	_____	_____	After the 60-day response period, offers are evaluated utilizing the evaluation criteria established in the fact sheet.

Transition From Planning To Contracting

DUE DATE	DATE DONE	PERSON RESPONSIBLE	ITEM
July 19__	_____	_____	Region notifies applicants in writing as to the final selection.
	_____	_____	Negotiation period ensues. Both regional and park staff should participate.
August 19__	_____	_____	Region finalizes proposed contract and forwards original and two tissue copies through the superintendent to the successful applicant for signature.
	_____	_____	Superintendent returns contract to region after it is signed by applicant.
September 19__	_____	_____	Region transmits three copies of signed contract to WASO for transmittal to the Congress.
December 19__	_____	_____	After the 60-day waiting period, region assigns a contract number to contract and regional director executes. Regional office then distributes contract as follows:
	_____	_____	1. Original retained in regional office.
	_____	_____	2. One executed carbon bearing original signatures is sent to concessioner.
	_____	_____	3. One executed carbon bearing original signatures is sent to WASO.
	_____	_____	4. Duplicated copies of contract sent to regional finance office.
Until Contract Expires			Region and park follow-up with annual contract compliance work.

AUTHORITY FOR CONCESSION AUTHORIZATIONS

A. LAW

1. Act of August 25, 1916 (As amended by P.L. 85-434)
39 Stat. 535, 16 U.S.C. 3

§ 3. Rules and regulations of national parks, reservations, and monuments; timber; leases

The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violation of any of the rules and regulations authorized by this section and sections 1, 2, and 4 of this title shall be punished by a fine of not more than \$500 or imprisonment for not exceeding six months or both, and be adjudged to pay all costs of the proceedings. He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. He may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding thirty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: *Provided, however,* That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze livestock within any national park, monument, or reservation herein referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to the Yellowstone National Park: *And provided further,* That the Secretary of the Interior may grant

said privileges, leases, and permits and enter into contracts relating to the same with responsible persons, firms, or corporations without advertising and without securing competitive bids: *And provided further,* That no contract, lease, permit, or privilege granted shall be assigned or transferred by such grantees, permittees, or licensees without the approval of the Secretary of the Interior first obtained in writing: *And provided further,* That the Secretary may, in his discretion, authorize such grantees, permittees, or licensees to execute mortgages and issue bonds, shares of stock, and other evidences of interest in or indebtedness upon their rights, properties, and franchises, for the purposes of installing, enlarging, or improving plant and equipment and extending facilities for the accommodation of the public within such national parks and monuments.

(Aug. 25, 1916, ch. 408, § 3, 39 Stat. 535; June 2, 1920, ch. 218, § 5, 41 Stat. 732; Mar. 7, 1928, ch. 137, § 1, 45 Stat. 235; May 29, 1958, Pub. L. 85-434, 72 Stat. 152.)

2. Act of June 30, 1932
47 Stat. 412, 40 U.S.C. 303(b)

§ 303b. Lease of buildings by Government; money consideration

On and after June 30, 1932, except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts.

(June 30, 1932, ch. 314, § 321, 47 Stat. 412.)

3. Act of August 8, 1953
67 Stat. 495, 16 U.S.C. 1(b)(4)

(4) Utility services for concessioners; reimbursement

Furnishing, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System: *Provided*, That reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

4. P.L. 87-608 (August 24, 1962)
76 Stat. 405, 40 U.S.C. 303(c)

§ 303c. Maintenance and repair of Government improvements under concession contracts

Privileges, leases, and permits granted by the Secretary of the Interior for the use of land for the accommodation of park visitors, pursuant to section 3 of title 16, may provide for the maintenance and repair of Government improvements by the grantee notwithstanding the provisions of section 303b of this title, or any other provision of law.

(Pub. L. 87-608, Aug. 24, 1962, 76 Stat. 405.)

5. P.L. 89-249 (October 9, 1965)
79 STAT. 969, 16 U.S.C. 20

Relating to the establishment of concession policies in the areas administered by National Park Service and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1), which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

National Park
Service.
Concession
policies.

SEC. 2. Subject to the findings and policy stated in section 1 of this Act, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

"Concessioners."

SEC. 3. (a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Contracts.

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Profits.

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Rates.

79 STAT. 969
79 STAT. 970

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges

Franchise
fees.

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October 9, 1965

granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

Contracts, extension, renewals, etc.

SEC. 4. The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

SEC. 5. The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 4 of this Act, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof.

Possessory interest.

SEC. 6. A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the

79 STAT. 970

79 STAT. 971

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Secretary determines that equitable considerations warrant recognition of such interest.

SEC. 7. The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303(b)), relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, or the Act of August 21, 1935, chapter 593 (49 Stat. 666; 16 U.S.C. 461-467), as amended. 16 USC 1.

SEC. 8. Subsection (h) of section 2 of the Act of August 21, 1935, the Historical Sites, Buildings, and Antiquities Act (49 Stat. 666; 16 U.S.C. 462(h)), is amended by changing the proviso therein to read as follows: "Provided, That the Secretary may grant such concessions, leases, or permits and enter into contracts relating to the same with responsible persons, firms, or corporations without advertising and without securing competitive bids."

SEC. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof. Records.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of each concessioner or subconcessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved. Availability.

Approved October 9, 1965, 6:35 a.m.

6. P.L. 94-458 (As amended by P.L. 95-625) (a) and (b) omitted) October 7, 1976
90 Stat. 1939, 16 U.S.C. 1a-1
92 Stat. 3518, 3519, 16 U.S.C. 1a-7

Concession leases and contracts; proposed awards; transmittal to Congressional committees

(c) The Secretary of the Interior shall hereafter transmit to the Committees on Interior and Insular Affairs all proposed awards of concession leases and contracts involving a gross annual business of \$100,000 or more, or of five years or more in duration (including renewals thereof), and all proposed rules and regulations relating thereto, sixty days before such awards are made or such rules and regulations are promulgated.

Pub.L. 91-383, § 12, as added Pub.L. 94-458, § 2, Oct. 7, 1976, 90 Stat. 1942, and amended Pub.L. 95-625, Title VI, § 604(3), (4), Nov. 10, 1978, 92 Stat. 3518, 3519.

7. P.L. 96-514 (December 12, 1980)
94 Stat. 2962, 16 U.S.C. 20b

§ 20b. Protection of concessioner's investment

Termination for Cause Clauses In Concessionaire Contracts. Pub.L. 97-100, Title I, § 100, Dec. 23, 1981, 95 Stat. 1395, provided in part: "That the Park Service shall not enter into future concessionaire contracts, including renewals, that do not include a termination for cause clause that provides for possible extinguishment of possessory interests

excluding depreciated book value of concessionaire investments without compensation."

Similar provisions were contained in the following prior laws:

1980—Pub.L. 96-514, Title I, § 100, Dec. 12, 1980, 94 Stat. 2962.
1979—Pub.L. 96-126, Title I, § 100, Nov. 27, 1979, 93 Stat. 959.

B. REGULATIONS

1. 36 CFR, Section 5.3 (Authority For Commercial Use License)

§ 5.3 Business operations.

Engaging in or soliciting any business in park areas, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, except as such may be specifically authorized under special regulations applicable to a park area, is prohibited.

2. 36 CFR, Part 51—Concession Contracts and Permits

**PART 51—CONCESSION CONTRACTS
AND PERMITS**

Sec.

51.1 Authority.

51.2 Policy.

51.3 Definitions.

51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*

SOURCE: 44 FR 62895, Nov. 1, 1979, unless otherwise noted, unless otherwise noted.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.* All concession contracts and permits are subject to the requirements of this Part 51.

§ 51.2 Policy.

It is the policy of the Secretary, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appro-

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prate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this Part 51:

(a) "Concession Contracts" and "Concession Permits" (or "contracts" and "permits") are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain public accommodations, facilities or services within a park area under the administration of the Director. Concession Permits are generally utilized where the authorized concession operations are not expected to gross more than \$100,000 annually, where the term of the permit is less than five (5) years, where no possessory interest is to be granted to the concessioner, and where no preferential rights to additional services are authorized. In other instances, Concession Contracts are utilized.

(b) "Right of Preference" refers to the right of existing satisfactory concessioners to a preference in the renewal or negotiation of a new contract or permit covering substantially the same accommodations, facilities and services as provided by the concessioner under the terms of its existing contract or permit. Prior to the expiration or termination of a contract or permit a determination shall be made based on annual evaluations, as to whether or not the concessioner is entitled to a preference in the renewal of its contract or permit. An unsatisfactory rating, results in the loss of the right of preference.

(c) "Preferential Right" refers to the right to provide new or additional services and facilities which may be granted to a concessioner by Concession Contract as the Director may consider necessary for the accommodation and convenience of the public.

(d) The term "Director" refers to the Director of the National Park Service or his authorized representatives.

(e) The term "Secretary" refers to the Secretary of the Interior or his authorized representatives.

§ 51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

(a) Where no right of preference exists, the Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed Concession Contract or Permit, and the principal factors considered in selection. Public notice of the availability of the concession opportunity shall be published in the FEDERAL REGISTER and/or at least once in local or national newspapers or trade magazines, as appropriate, and will be distributed to interested parties and organizations. The prospectus will be made available upon request to all interested parties and will allow a minimum of sixty days for proposals to be submitted unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All proposals received shall be evaluated by the Director, and the proposal considered best by the Director on an overall basis shall be selected as the basis for negotiation of the Concession Contract or Permit.

(b) The principal factors to be considered in selection of the best proposal shall be (1) the experience and related background of offerors, (2) the offeror's financial capability, and (3) conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor. Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any applicant additional information, or written or verbal clarification of a proposal, and may extend the solicitation period in his discretion. The Director may choose to reject all proposals received at any time and resolicit or cancel the solicitation altogether in his discretion when in the best interest of the Government. Any material information made available to any applicant by the Director must be made

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available to all applicants, and will be available to the public upon request.

(d) Negotiation of a final contract and permit with the selected applicant shall commence promptly. Material amendments to the proposed terms and conditions of the Concession Contract or Permit, as described in the prospectus, may be negotiated only after resolicitation of the concession opportunity for an appropriate period of time by amendment to the prospectus and readvertising. After negotiation of Concession Contracts with anticipated gross receipts in excess of \$100,000 or five (5) years or more in duration, such contracts shall be forwarded to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs for a 60-day waiting period prior to award. The Director may, in his discretion, terminate negotiation of a Concession Contract or Permit at any time prior to execution by the Government and resolicit or cancel the solicitation when in the best interest of the Government.

(e) The terms and conditions of the solicitation must represent the requirements of the National Park Service and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection and that it is in the public interest to protect visitor or park resources or otherwise, the Director may negotiate a Concession Contract or Permit with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

The procedures described in § 51.4 shall apply to the solicitation, negotiation and award of extensions, renewals, or replacement of contracts or permits by a new contract or permit where an existing concessioner has a right of preference except as follows:

(a) A fact sheet rather than a prospectus will be developed by the Direc-

tor and will describe the existing concessioner's right of preference as well as the material terms and conditions under which the National Park Service proposes to negotiate a new concession contract or permit with the existing satisfactory concessioner.

(b) The concessioner with the right of preference shall be required to submit a proposal in response to the fact sheet. If, after evaluation of all proposals received, a proposal other than that of the existing concessioner is determined to be the best proposal, the existing concessioner shall be given an opportunity to meet the terms and conditions of the best proposal. If the existing concessioner does so and its proposal, as amended, is in the judgment of the Director, at least substantially equal to the best proposal, the existing concessioner shall be selected for negotiation of the contract or permit. If not, the contract or permit will be negotiated with the party that submitted the best proposal.

(c) The requirement for public notice and evaluation of proposals received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by Concession Contract has a right to provide such additional services, the Director shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party and give the existing concessioner a reasonable opportunity to review such description to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize

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additional services to be provided by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

(a) Concession Contracts and Permits or operations authorized thereby or controlling interests therein may not be transferred, sold, or assigned, or assets thereof encumbered in any manner, including stock purchases, mergers, consolidations or reorganizations, except with the written approval of the Director. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract or permit.

(b) The term "controlling interest," as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner.

(c) Prior to consummating any transfer, sale, assignment or encumbrance of a controlling interest, the concessioner will request approval of the Director in writing and provide the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) Statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) Description of the management qualifications and financial background of the proposed transferee; and

(6) A statement as to whether the proposed sale constitutes a controlling interest and the particulars thereof as described in paragraph (b) of this section; and

(7) Such other information as the Director may require.

(d) Prior to the sale, transfer, assignment or encumbrance of anything other than a controlling interest, the concessioner must have notified the Director in writing and must have received acknowledgement from the Director. Information as to why it is not a controlling interest and identification of the transferee must be submitted with the required notification. Failure to comply with this provision shall make the subject sale or transfer null and void and constitute a material breach of the Contract or Permit.

(e) The Director may choose not to approve a proposed sale, transfer, assignment or encumbrance in his discretion or may place appropriate conditions on any approval as are necessary to protect the public interest. Concession Contracts and certain Concession Permits contain provisions which limit the purposes for which they may be encumbered. Such limitations are incorporated by reference herein as an element of the Director's review of such transactions.

C. POLICIES

1. Management Policies Manual, Chapter VIII

a. ESTABLISHMENT VIA PROSPECTUS

The Secretary is authorized by law to enter into concession contracts and permits without securing competitive bids for new concession operations. However, it is the policy of the NPS to issue a prospectus to actively solicit and invite offers from as many persons and corporations as possible who may be interested and qualified to provide and operate the particular concession facilities and services. A prospectus is issued when there is a new concession opportunity, when an existing concessioner has been determined to be unsatisfactory, or when an existing concessioner requests the assistance of the Service in locating a successor because he no longer wishes to operate. Any deviation from this policy requires the prior approval of the Director.

b. PREPARATION OF FACT SHEETS

A fact sheet is issued when there is an existing satisfactory concessioner who will be granted preference in the renewal of its contract or permit. Any meeting with existing concessioners or other outside parties during the planning process should be well documented. The requirements of the fact sheet must represent the needs of the NPS and not be tailored or fashioned to reflect the needs or capabilities of the existing concessioner. Access to information must be available to anyone interested in submitting an offer. No persons except NPS personnel may be permitted to read or review fact sheets prior to public release of the final document. As long as these criteria are met, contact with anyone prior to the preparation of fact sheets is legitimate for the purpose of gathering information in the planning process.

c. MINORITY BUSINESS

Pursuant to a Cooperative Agreement on Minority Enterprise in the National Park System, September 1983, between National Park Service and the Minority Business Development Agency (formerly Office of Minority Business Enterprise) of the Department of Commerce and to assure maximum information and assistance to potential minority concessioners, the Service will advise the Minority Business Development Agency of the Department of Commerce in advance of the public announcement

as to the availability of concession opportunities.

d. STANDARD CONCESSION CONTRACT

Influenced by the requirements of changing times, legislation, and policy, the standard concession contract language has evolved over a period of many years. It is a flexible document that should satisfy the requirements of most contracting actions, and should be used to the fullest extent possible. If a deviation is determined to be necessary before or during the composition of a fact sheet or prospectus, or during contract negotiations, the Director's approval must be sought in advance and obtained in writing before issuance of a fact sheet or prospectus and/or before contract negotiations are concluded. Such requests should fully explain and justify the recommended changes.

e. STANDARD CONCESSION PERMIT

The Standard Concession Permit Language, Form 10-112, is the official document to be used in all circumstances. If additional conditions or provisions are required over and beyond those on the official form, they may be added to that form as an addendum by referring to them by appropriate reference in the body of form 10-112. Such additional conditions or provisions cannot be inconsistent with the standard form provisions.

f. LENGTH OF TERM OF CONCESSION CONTRACTS AND PERMITS

The statutory limitation for concession contracts is 30 years. However, it is in the public interest that the term of all contracts be kept at a minimum consistent with investment. Concession contracts may be issued for a term up to 10 years where no additional investment or minimal investment is required and future plans of the NPS for the area have been determined. Concession contracts requiring substantial investment may be negotiated for more than 10 years with primary consideration given to the size and scope of the operation and to financing requirements in relation to the terms of contract (e.g., projected cash flow, payback provisions, and cost of capital). Any proposed term of contract which exceeds 15 years must be approved by the Director in writing.

The statutory limitation for concession permits is 30 years, but it is the policy of the NPS to limit the term of permits

to a maximum of 5 years.

g. IMPROVEMENTS MADE BY CONCESSIONERS TO GOVERNMENT ASSIGNED FACILITIES

Concessioners shall be required to make such necessary capital investments for major repairs and/or improvements to assigned Government improvements that serve to prolong the life of such improvements. These expenditures shall be consistent with a reasonable opportunity for the concessioner to realize a profit on its operations. Where capital improvements to government acquired or constructed facilities, including utility systems, are determined to be necessary and economically feasible for the accommodation of park visitors pursuant to the NPS planning process, they should be made by the concessioner. However, if the National Park Service determines that the required improvements are necessary but economically infeasible, such improvements may be made by the National Park Service subject to the availability of appropriated funds.

The concessioner making capital improvements in government owned facilities shall have a possessory interest in such improvements to the extent of book value unless unusual circumstances require compensation at less than book value.

h. SUBCONCESSIONS

The National Park Service does not encourage and generally will not approve subconcession contracts or agreements unless: (1) the proposed subconcession operation is essential to provide better service to the public, and (2) the prime concessioner furnishes the basic facilities and/or services to the subconcessioner.

Any subconcession contract or agreement that a prime concessioner proposes to enter into that would authorize a third party (subconcessioner) to exercise certain responsibilities or privileges under the prime concession contract must be approved by the Secretary before becoming effective.

In the event that a subconcession contract is approved, the concessioner is required to pay to the Secretary within a prescribed time (in addition to the franchise fee payable on both the total gross receipts of the subconcessioner and of the prime concessioner, as provided for in the concession contract), fifty percent (50%) of any and all fees, com-

missions, or compensation payable to the concessioner by the subconcessioner.

A subconcession may not be permitted under any concession authorization except a concession contract.

i. SALES AND TRANSFERS

Concessioners or entities holding an ownership interest in a concession may sell their interest, or part of their interest, to another entity as long as the appropriate National Park Service requirements are met and approvals granted prior to the transfer. Transfers of interest that occur without meeting National Park Service requirements constitute a material breach of the contract and are cause for immediate termination.

Debt incurred for purchase or the purchase price paid for a concession will not be used as justification for: (1) a rate increase beyond the point of reasonable comparability pursuant to Section 3(c) of P.L. 89-249; (2) a waiver or reduction of franchise fees; or (3) a claim that a reasonable opportunity to realize a profit pursuant to Section 3(b) of P.L. 89-249 is being denied.

The purpose of the National Park Service program of review and approval of transfers of interest is to ensure that the concessioner will be in a legal, managerial and financial position to meet the terms of the contract and provide the appropriate services to the public. As such, the same care should be taken and tests made in a transfer of interest as are performed in an evaluation of offers in response to a National Park Service solicitation.

j. VENDING MACHINES (RANDOLPH-SHEPPARD ACT)

When new concession opportunities for the operation of vending facilities become available, NPS is authorized and required to give priority in the award of the contracts or permits to licensed blind vendors.

k. COMMERCIAL USE LICENSE

The Commercial Use License (CUL) is a simple authorization procedure for use by Superintendents to identify and document commercial activities occurring in park areas to determine the extent of their operations and to assure the protection

of area resources and the safety and enjoyment of park visitors. The CUL authorizes those commercial activities in park areas which are not limited in number and which are initiated and terminated outside of the park area. All aspects of business, i.e., advertisement, exchange of money, etc., take place outside the park area.

The CUL does not come within the purview of P.L. 89-249, the Concessions Policy Act, but, rather 36 CFR §5.3. While none of the requirements and/or restrictions of P.L. 89-249 apply, the license shall not be used as a means to circumvent the administrative process associated with concession authorizations.

1. HOSTELS

Hostel operations within areas of the NPS fall within the purview of P.L. 89-249, the Concession Policy Act of 1965, 16 U.S.C. 20. Any current hostel operation authorized under "special use permits" should, upon expiration, be treated as a new concession opportunity. An existing hostel operating under a special use permit can be contracted non-competitively (sole sourced) after fully justifying such action, without public notice pursuant to 36 CFR §51.4f.

Hostelers authorized to operate within NPS areas shall not require membership in any organization for the use of the services or facilities at the concession operation, and shall not discriminate in rates charged to any members of the general public. Rates must be approved by the NPS. NPS hostelers shall not offer advantages exclusively to its member viz., discount on rooms and preference on reservations. Such practice would conflict with the Service's policy of "first come, first served" without preference.

The specific criteria for use and the conditions of contracts, permits, Commercial Use Licenses, Youth Hostel Permits and Special Use Permits can be found in Exhibit 1 to this chapter.

D. RESPONSIBILITIES/ROLE AND FUNCTION

1. Washington Concessions Office, Branch Of Contracts

The Washington Office of Concessions is responsible for the development, implementation, and monitoring of contracting policies, guidelines, procedures and regulations to assure continuity in application on a Servicewide basis. In carrying out this function, WASO is responsible for:

a. Developing policy and reviewing contracting documents to assure that they are completed consistent with policies, department direction and in a professional manner.

b. Meetings with regional Concessions personnel and concessioners to assure coordination, communication, cooperation and adherence to policy.

c. Conducting Regional Office overviews relating to concession contract administration.

d. Maintaining a Servicewide prospective concessioners list for notification as to concession opportunities.

e. Liaison with the Office of the Secretary with respect to the OMBE (MBDA) Agreement.

f. Updating, revising and monitoring the use of the Standard Concession Contract Language.

g. Responding to requests for policy deviations including approval of contract terms over 15 years.

h. Coordination and execution of multi-Regional contracts.

2. Region

Pursuant to the delegation of Contracting Authority effective March 6, 1979, the Regional Director has responsibility for the preparation, negotiation and execution of concession contracts. (See Exhibits 2 and 3 to this chapter.) The authority of the Regional Director is carried out by the Regional Concessions Chief and his staff. The Regional Office is responsible for:

a. The preparation of prospectuses and fact sheets for the negotiation of concession contracts and permits, and sale approval documents utilizing input from the park, and its own technical knowledge.

b. Obtaining legal and management review before making final recommendations on contracting actions.

c. Execution of contracting actions for which the annual gross receipts are \$100,000 or more and/or for a term of 5 years or more. Contracting actions include negotiation and extension of new contracts or permits, amendments and executions, sales and transfers, approval of subconcessioners, suspensions, renegotiation of franchise fees, and terminations.

d. Requesting the Director's formal approval before deviating from policy or use of the Standard Concession Contract language.

e. Developing internal control procedures for administering the contract and insuring that its terms are fulfilled. This is done in conjunction with input from the park and the concessioner with respect to major new contracts.

f. Providing assistance and guidance to parks on contracting actions.

3. Park

In those park areas having concession operations, contract administration is the responsibility of the Superintendent. The park Concession Specialist functions as the contact with concessioner officials.

In executing the contracting function at the park level the following elements are indicative of the program responsibilities.

a. Final execution authority for permits, excepting those that gross \$100,000 or more and/or are 5 years or more in duration.

b. Issuance and monitoring of Commercial Use License.

c. Make recommendations to Region on proposed new contracts.

d. Participate and provide input on all contract negotiations based on specialized experience.

e. Preparation of all contracting documents (i.e., Fact Sheets, Prospectus, draft permits, etc.) for permits under 100,000 or more in gross receipts or less than 5 years in duration.

f. Termination authority for permits of less than 5 years duration and permits that gross less than \$100,000 annually.

CRITERIA FOR USE AND THE CONDITIONS OF THE VARIOUS TYPE AUTHORIZATIONS

<u>CONCESSION CONTRACT</u>	<u>CONCESSION PERMIT</u>	<u>COMMERCIAL USE LICENSE</u>
The Concession Policy Act (P.L. 89-249) mandates that commercial businesses which "provide and operate facilities and services.....for the accommodation of visitors in areas administered by the National Park Service" shall be authorized pursuant to concession permits and contracts and under the particular statutory requirements of the Concession Policy Act.		Does not come under the purview of P.L. 89-249. Simply a device whereby the Superintendent has documentation of the use of park lands. Comes under the authority of CFR Title 36, Chapter 1, Section 5.3.
<u>CRITERIA</u>		
Annual gross receipts of 100,000 or more.	Normally \$100,000 or less	N/A
Concessioner may be required to acquire and/or construct permanent facilities.	Not required or permitted	No
Concessioner may be required to make substantial investment in personalty.	No	No
May grant possessory interest.	No	No
May grant a preferential right to provide additional services.	No	No
N/A	N/A	No limitation intended on the number of commercial activities of a particular type. If limitation is imposed, concession contract or permit would be required.

<u>CONDITIONS OF AUTHORIZATIONS</u>		<u>COMMERCIAL USE LICENSE</u>
<u>CONCESSION CONTRACT</u>		
Term may be up to 30 years. Director must approve terms over 15 years.	By statute term may be up to 30 years. By NPS policy term may be up to 5 years.	Term will not exceed 2 years.
Executed by Regional Director.	*Executed by Superintendent.	Signed by Superintendent.
Requires concessioner to <u>provide</u> specified services.	Authorizes but does not require concessioner to provide services.	Authorizes commercial activities in park areas. All activities must <u>originate and terminate outside</u> of park boundaries.
Bond may be required.	No	No.
Subconcession may be granted with Regional Director's approval.	No	No
Franchise fee is normally a percentage of gross receipts plus an annual use fee based on fair rental value for government-owned buildings, structures, or facilities assigned.	Franchise fee is normally a fixed amount plus an annual use fee based on fair rental value for government-owned buildings, structures, or facilities assigned.	Fee paid in advance.
May be terminated for default by the Regional Director pursuant to Section 11 of the Standard Concession Contract Language.	*May be executed and/or revoked at any time by Regional Director and/or Superintendent.	May be revoked at any time by the Superintendent.
*Permit must be <u>executed and/or revoked</u> by Regional Director if term is for 5 years or more or annual gross receipts are anticipated to be \$100,000 or more. Superintendent executes and/or revokes permits with terms of less than 5 years and anticipated gross receipts of less than \$100,000.		

CONCESSIONS

NPS-48

Authority For Concession AuthorizationsEXHIBIT 1
Chapter 5
Page 3CONCESSION CONTRACTCONCESSION PERMITCOMMERCIAL USE LICENSE

May be suspended at discretion of Regional Director to protect health and safety of visitors and employees or to protect area resources.

May require compensation if services are discontinued.

Must be sent to appropriate committees of Congress when term is 5 years or more or gross receipts are \$100,000 or more.

Reserve first lien on assets.

May be amended, assigned, or extended.

Must give public notice in advance.

Satisfactory concessioner has preference in renewal.

Insurance required pursuant to Section 15 of the Standard Concession Contract Language.

Nondiscrimination language required (Exhibit "B")

*May be suspended at discretion of Regional Director and/or Superintendent.

No

Only permits with terms of 5 years or more or anticipated gross receipts of \$100,000 or more must be sent to the committees.

Same

Same

Same

Same

Yes

Yes

May be suspended at any time at discretion of the Superintendent.

N/A

No.

No.

No

No

No

Yes

Yes

*May be suspended at discretion of Regional Director if term is for 5 years or more or annual gross receipts are anticipated to be \$100,000 or more. May be suspended at discretion of Superintendent if term is less than 5 years and anticipated annual gross receipts are less than \$100,000.

CONCESSION CONTRACTCONCESSION PERMITCOMMERCIAL USE LICENSE

Land assignment normally provided by separate exhibit.

Normally included in permit.

Area of use within the park may be specified.

Annual Financial Report required.

Same

May be required (Superintendent's discretion)

ADMINISTRATIVE REQUIREMENTS

Periodic evaluation of operations required.

Same

No

Annual evaluation of contract compliance required.

Same

No

Rate approval required.

Same

No

OTHER AUTHORIZATIONSYOUTH HOSTEL PERMIT

Youth hostel operations fall within the purview of P.L. 89-249, and the permit as shown in NPS-30 which was designed specifically for hostel operations, should be utilized. More recent information with respect to hostel management is enunciated in the Deputy Director's memorandum to all Regional Directors dated January 7, 1983.

SPECIAL USE PERMIT

Special Use Permits are temporary and revocable and are only issued for non-concession activities where land is temporarily not needed for park purposes. Special guidelines on uses of these permits are being separately issued.

National Park Service
(Order 77)
DIRECTORS OF NATIONAL PARK SERVICE REGIONS

Delegation, Redelelegation, and Revocation of Authority

SECTION 1. Delegation. The Directors of National Park Service Regions in the administration, operation, and development of areas and offices under their supervision, are authorized to exercise all the authority now or hereafter vested in the Director, National Park Service, except with respect to the following:

(1) Authority to approve changes in policies and to establish new policies.

(2) Authority for final approval of Servicewide or regionwide program and financial plans for construction, professional services, land acquisition, park operations, and other programs.

(3) Authority for final approval of the location of new roads.

(4) Authority to perform the responsibilities set forth in title I and section 205(a) of title II of the Historic Preservation Act of October 15, 1966 (80 Stat. 915), as amended, except that the responsibilities of the Director under section 106 of title I as head of an undertaking agency are hereby delegated.

(5) Authority to initiate investigations of areas suggested or proposed for inclusion in the National Park System and sites under consideration for National Landmark status.

(6) Authority vested in the Secretary of the Interior by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484) relating to evaluation of the historical significance of surplus Federal property proposed for demolition or transfer and relating to the plans for restoration, rehabilitation, maintenance, operation, and use of transferred historic monuments.

(7) Authority to execute, amend, assign, and terminate concessions contracts and permits in excess of 5 years duration or when anticipated annual gross receipts will amount to \$100,000 or more.

(8) Authority to issue general travel authorizations as defined in 347 DM .2.2C.

(9) Authority to approve the payment of actual subsistence expenses for travel.

(10) Authority to approve attendance at meetings of societies and associations.

(11) Authority to approve acceptance of payment of travel, subsistence and other expenses incident to attendance at meetings by an organization which is tax exempt.

(12) Authority with respect to making and enforcing rules and regulations for the Government, conduct, and discipline of the U.S. Park Police under the Act of October 11, 1962 (76 Stat. 907).

(13) Authority to make certifications required in connection with reports made to the Secretary on each appropriation or fund under National Park Service control.

(14) Authority to approve Standard Form 1151. Nonexpenditure Transfer Authorization, in connection with internal transfer of funds.

(15) Authority to approve the use of a Government-owned or leased motor vehicle between domicile and place of employment.

(16) Authority to approve payment of dues for library memberships in societies or associations.

(17) Authority to approve rates for quarters and related services.

(18) Authority over those matters for which specific authority is delegated in internal management directives and unpublished delegations of authority arising in the Washington office.

SEC. 2. Redelegation. Subject to the following exceptions; the Directors of the Regions may, in writing, redelegate to their officers and employees, the authority delegated in this order and may authorize written redelegations of such authority.

(1) Master Plan approval authority may not be redelegated.

(2) In the regional offices, procurement and contracting authority in excess of \$2,000 may only be redelegated to the Chief, Division of Property Management and General Services and the Chief, Office of Finance and Control. Authority to contract for supplies, equipment and services, including construction, may be redelegated by the Directors to Superintendents as follows: Superintendents, Grade GS-12 and below not to exceed \$2,000; Superintendents, Grade GS-13 not

to exceed \$50,000; Superintendents, Grade GS-14 not to exceed \$100,000; Superintendents, Grade GS-15 not to exceed \$200,000. Authority to contract for supplies, equipment and services, including construction, may be redelegated by the Director, Northeast Region to District Director, New York Office not to exceed \$200,000. The limitations in this subsection (2) of section 2 apply only to open market or nonmandatory sources of supply. Employees and officers who are otherwise authorized may continue to issue orders to GSA Centers and sources under established Federal Supply Schedules of Contracts in amounts exceeding \$2,000.

(3) Authority to approve land acquisition priorities may not be redelegated. Authority to execute the land acquisition program, including contracting for acquisition of lands and related property, and options and offers to sell related thereto, may be redelegated only to the chief land acquisition officer in the Regional Office and field land acquisition officers.

(4) Authority to conduct archeological investigations and salvage activities may not be redelegated.

Each redelegation shall be published in the Federal Register.

Section 3. Revocation. This order revokes National Park Service Order 66 (36 FR 21218), Amendment NO. 1 (37 FR 4001), Amendment No. 2 (37 FR 12854), and National Park Service Order 63 (36 FR 5629). However, redelegations based thereon are continued in effect to the extent that they are not inconsistent with this Order No. 77.

(205 DM, as amended; 245 DM, as amended; Sec. 2 of Reorganization Plan No. 3 of 1950).

Dated: February 27, 1973.

Ronald H. Walker,
Director, National Park Service

National Park Service

(Order No. 77, Amendment No. 8)

REGIONAL DIRECTORS

Delegation of Authority

Order No. 77, approved February 27, 1973, and published in the Federal Register of March 22, 1973 (39 FR 7478), as amended, set forth in Section 1 the exceptions on delegations of authority, and in Section 2 certain limitations on redelegation of authority.

Section 1. Delegation. . . . (7) Authority to substantively modify approved standard language of concession contracts and other concession related contracting documents. Section 2 is hereby amended by adding paragraph (6) as follows:

Section 2. Redelegation. . . . (6xa) Authority to execute, amend, approve assignment of, or terminate concession contracts may not be redelegated.

(6)(b) Authority to execute, amend, approve assignment of sales, or terminate concession permits of five (5) years duration or more, or when anticipated annual gross receipts will amount to \$100,000 or more, may not be redelegated.

(6)(c) Authority to execute concession contracts or concession permits of five (5) years duration or longer, or when anticipated annual gross receipts will amount to \$100,000 or more, shall be exercised only after the proposed contracts and/or permits are submitted to the Director for transmittal to the Committee on Interior and Insular Affairs sixty (60) days prior to award.

(6)(d) Authority to execute, amend, approve assignments or sales, or terminate concession permits of under five (5) years duration, or when anticipated annual gross receipts will amount to less than \$100,000, may be redelegated only to Superintendents.

This Amendment becomes effective March 6, 1979.

Daniel J. Tobin, Jr.
Acting Director

March 2, 1979

RENEWAL PROCESS FOR CONCESSION AUTHORIZATIONS (FACT SHEET)

A. CONTRACTS

1. Introduction (Preferential Right To Renewal)

Public Law 89-249 provides that the Secretary shall encourage continuity of operation by granting a preference in the renewal of a new authorization to a concessioner that has performed its obligations satisfactorily under a previous authorization. The right of preference in renewal, in effect, grants an existing satisfactory concessioner the right to meet the terms of responsive offers for a proposed new contract/permit and a preference in the award of the contract/permit, if, thereafter, the offer is substantially equal to others received. This law also provides that reasonable public notice of intent must be given and all offers received as a result of the notice shall be considered and evaluated. These provisions, without exception, are applicable to all existing concession authorizations (contracts and permits).

At least 1 year prior to contract or permit expiration, the Park should begin developing a Fact Sheet and proposed contract stating the terms and conditions under which the National Park Service intends to negotiate a new concessions contract or permit with the existing satisfactory concessioner. The Fact Sheet must represent the needs of the National Park Service and should not be tailored to reflect the needs or capabilities of existing concessioners.

The goal of this policy is to assure that the type, quantity, and quality of services and accommodations for the visiting public will be established by the NPS based on the requirements of the park area.

2. Development Of Contractual Requirements

With the completion of the Concession Review (Planning for Renewal) discussed in Chapter 3, paragraph B., and in consideration of the existing concessioner's right of preference in renewal, the Region/Park is ready to prepare the Fact Sheet, stating the terms and conditions under which it proposes to continue the operations.

A sample time table (flow chart) showing what, how and when the renewal process should begin can be found in Chapter 3, Exhibit 1. The following steps should be taken to begin preparation of the Fact Sheet and proposed contract:

The Park or Region commences with the preparation of a draft Fact Sheet. If the Park prepares it, the Superintendent prepares the draft and forwards the entire package to the Region. If initiated at the Regional level, the package should be forwarded to the Park for input. The following concerns should be covered in the transmittal memorandum:

a. A statement as to whether or not the concessioner has performed satisfactorily in the past and has expressed its interest in writing for continuing its operations.

b. Recommendations should be made on the following contract provisions:

- Term of Contract
- Building and Improvement Program
- Services and accommodations to be provided
- Franchise Fee
- Building Use Fee
- Maintenance and Operating Agreements (consideration for Concessioner and Government Owned facilities)
- Utilities
- Compensation (possessory interest)

c. Tie contract recommendations to the concessions review and provide any additional data in support of contract term, franchise fee, etc. This would include any special studies such as economic feasibility and marketing studies, financial reviews, etc., that have been carried out.

d. NPS responsibilities for construction projects and/or funds which will be needed in the foreseeable future for concessioner related activities. The time phasing for such concessioner-Service related responsibilities should be coordinated and funds allocated or programmed to meet these needs.

e. Statements as to any existing possessory interest of the concessioner.

f. Maintenance responsibilities and operating specifications that need to be emphasized. Is there a need for maintenance and operating agreements? If such agreements are in place, they should be reviewed for any modifications that may be required.

g. Other considerations affecting this operation, i.e., architectural barriers, flood plain review, 106 clearance.

3. Preparation Of The Fact Sheet

As soon as the above determinations have been made, a Fact Sheet is prepared using the format provided in Exhibit 1 to this chapter. The words, sentences and paragraphs in the Fact Sheet format that are bracketed are to be used or deleted as applicable to the particular concession and contract situation.

Applicable blanks should be filled in. This data will vary depending upon the type and extent of operations, conditions applicable to possessory

interest and other factors.

4. Preparation Of Proposed Contract

Concurrent with the preparation of the Fact Sheet, a proposed contract is drafted using the standard contract language found in Exhibit 2. The contract is to be drafted to the extent possible to coincide with the Fact Sheet requirements. Any changes made to the Standard Contract Language must be brought to the attention of WASO. Any deviations from the Standard Contract Language must be approved in writing in advance by the Director.

5. Preparation Of Supplemental Contract Documents

Supplemental contract documents are those documents, such as maintenance and operating plans, which provide the details and specifics of how the concessioner will operate and maintain its facilities within the framework of the contract language. These documents are to be drawn up during the renewal process and negotiated and signed by the successful applicant prior to execution of the contract by the Regional Director. These documents, which are to be made a part of the Fact Sheet Package, constitute further conditions for the renewal of a contract. A current rate schedule must also be included.

6. Procedures For Finalizing The Fact Sheet

When all of the above documents are completed they are to be assembled into the final Fact Sheet Package which shall consist of a double folder. Documents on the right side shall include those directly applicable to the proposed contract as follows:

a. ENCLOSURE NO. 1 - Fact Sheet

b. ENCLOSURE NO. 2 - Statement of Qualifications of Applicant. This must be completed by all applicants. However, the incumbent concessioner may not be required to complete the entire Statement of Qualifications of Applicant if portions of the information asked for are on file in the Regional or Park Office and are current. The Region or Park must be able to furnish the evaluation panel with the current information at the time the panel convenes. If no current information is available, then the incumbent concessioner will be required to complete the entire Statement of Qualifications of Applicant.

c. ENCLOSURE NO. 3 - Applicant's Transmittal Letter

d. ENCLOSURE NO. 4 - Proposed Contract with accompanying Exhibits.

e. ENCLOSURE NO. 5 - Current Rate Schedule

- f. ENCLOSURE NO. 6 - Proposed Maintenance Agreement
- g. ENCLOSURE NO. 7 - Proposed Operating Agreement
- h. ENCLOSURE NO. 8 - Any other supplemental contract documents.

Documents on the left side of the folder include general information applicable to NPS concessions policies.

- a. ENCLOSURE NO. 9 - Policies Affecting Negotiation of Contracts and Permits.
- b. ENCLOSURE NO. 10 - P.L. 89-249
- c. ENCLOSURE NO. 11 - NPS Handcraft and Merchandise Policy
- d. ENCLOSURE NO. 12 - General Information Statement on the Granting of Concessions

A permanent negotiation file must be established in the Region and Park containing the following documents and any other information relating to the proposed contract.

- a. The proposed and final Fact Sheet.
- b. A copy of any deviation from policy requests together with WASO response.
- c. Written legal clearance from the Solicitor's Office concurring in the contents of proposed contract and Fact Sheet.
- d. A copy of the public notice.
- e. A copy of the mailing list.
- f. All offers received in response to the notice and Fact Sheet.
- g. Evaluation report and supporting documentation.
- h. Letters to successful and unsuccessful accplicants.
- i. The proposed and final contract
- j. A copy of the transmittal letters to the Congress.
- k. Letter transmitting executed contract to concessioner.

1. Any other correspondence relating to the renewal of the proposed authorization, i.e., FOIA requests, letters from prospective applicants requesting additional information, etc.

The Fact Sheet Package, together with the proposed Notice of Intention, must be submitted to the Regional Solicitor for written concurrence as to legal sufficiency. Prior to public distribution of the Fact Sheet, a Notice of Intention must be published in the "Federal Register".

7. Procedures For Issuing The Public Notice And Fact Sheet

Pursuant to Section 5 of P.L. 89-249 the Secretary shall give reasonable public notice prior to granting extensions, renewals, or new contracts. Therefore, a notice of intention must be published in the "Federal Register" which provides for a minimum of 60 days from the date of publication of the notice for interested parties to submit offers based on the Fact Sheet, unless a written determination is made that a shorter period is necessary because of exceptional circumstances. Notwithstanding the foregoing, all Fact Sheets must explain why the NPS considers any pre-determined response period to be sufficient time for applicants to submit offers. The format for preparation of the public notice and the transmittal memorandum is provided in Exhibit 3 to this Chapter.

Regions are responsible for the following:

a. Sending an advance copy of the Fact Sheet to the Minority Business Development Agency (MBDA), formerly OMBE, immediately after the review and concurrence of the Regional Solicitor. See sample letter to MBDA in Exhibit 4 to this chapter.

b. Forwarding the public notice directly to the Chief, Administrative Services Division (WASO) for publication in the "Federal Register". The request shall be submitted in triplicate including the cover memorandum, proposed public notice and the written concurrence of the Field Solicitor. The notice should be double spaced with the name of the individual signing the notice typed directly under the signature line.

c. At the same time, a copy of the cover memorandum, proposed public notice, solicitor's concurrence and Fact Sheet package is to be sent to the Concessions Division (WASO).

d. The WASO Concessions Division will notify Regions as to the date of publication of the public notice in the "Federal Register." As soon as the notice is published, the Regions must forward a copy of the Fact Sheet Package to the existing concessioner with instructions for submitting a proposal (see Exhibit 5 to this chapter). The Fact Sheet will also be provided to any other interested parties as a result of the public notice. All proposals must be received within the time frame stipulated in the public notice.

8. Submission And Evaluation Of Offers

See Chapter 8 of this Guideline.

9. Execution And Distribution Of Contract

See Chapter 9 of this Guideline.

B. PERMITS

1. Establishment Of Permit Requirements

As with contracts, the development of the permit requirements in the renewal process should begin at least 1 year prior to the expiration of the permit. While the renewal of permits requires some concessions review (Planning for Renewal), in most cases it will not be as extensive as that needed for contracts. Since there are no capital improvements and thereby no possessory interest involved, economic feasibility studies are not needed.

In some cases, Regional and park management may need only to review the present permit to ascertain if the services provided are valid and adequate to meet visitor and park management requirements. However, with some permit renewals, it may be necessary to have a more in-depth review because of revised park plans or other changed circumstances.

The Superintendent should prepare a statement as to whether or not the concessioner has performed satisfactorily in the past and its interest in continuing its operation.

2. Preparation Of The Fact Sheet

A detailed Fact Sheet is not prepared in connection with permits. However, a "mini" Fact Sheet should be prepared stating in brief the terms and conditions under which it is proposed to issue the new permit. This is done to advise the existing concessioner and other interested parties who inquire about the proposal as to the conditions for renewal. Brevity can be achieved by extracting pertinent parts from the Fact Sheet format provided in Exhibit 1. The words, sentences and paragraphs that are bracketed may be used or deleted as the situation may warrant.

3. Preparation Of Proposed Permit

Concurrent with the preparation of the Fact Sheet, the proposed permit is drafted using the Standard Permit form found in Exhibit 6. The permit should be drafted in accordance with the Fact Sheet requirements.

4. Preparation Of Supplemental Permit Documents

Same as that described under contract renewals in paragraph A.5. above.

5. Procedures For Finalizing The Fact Sheet

Same as that described under contract renewals in paragraph A.6. above.

The Fact Sheet and proposed permit should be reviewed by the Regional Solicitor for legal sufficiency prior to issuance of the public notice. This can be done at the time that the Public Notice is submitted to the Solicitor for legal sufficiency.

6. Public Notice

The procedure for publication of the public notice is not the same for permits as for contracts.

Public notices relating to the renewal or extension of concession permits that are under 5 years in duration and gross receipts are under \$100,000 are the responsibility of the park and need not be submitted to the Washington Office for publication in the "Federal Register." This applies to all concession permit renewals and extensions except those which are 5 years or more in duration or which gross \$100,000 or more which should, therefore, be published in the "Federal Register". In which event, the notice of intention should be prepared and submitted under the procedures described for contract renewals in paragraph A.7 of this chapter.

In order that the public notices handled at the Regional level are done in a manner considered legally sufficient and which provides consistency Servicewide, the following criteria and procedures are to be followed:

a. The notice must be given prior to the expiration of the current permit.

b. The notice must be published in its entirety by at least two of the leading local daily newspapers for at least one day, or, the notice must be published in its entirety in one leading local daily newspaper for at least two days.

c. The content and format of the public notice must essentially follow that used for contracts as illustrated in Exhibit 3 to this chapter.

d. A copy of the notice must be sent to all persons known to be interested in such an operation. A prospective concessioner's mailing list will

be obtained from the Washington Office for this purpose and will be supplemented with the Regional and Park mailing lists.

7. Procedures For Issuing The Fact Sheet

a. The Region will forward an advance copy of the Fact Sheet to the Minority Business Development Agency (formerly OMBE).

b. Upon publication of the public notice, a copy of the Fact Sheet package will be sent to the existing concessioner with instructions for submitting a proposal. The Fact Sheet will also be provided to any other interested parties as a result of the public notice. All proposals must be received within the time frame stipulated in the public notice.

8. Submission And Evaluation Of Offers

See Chapter 8 of this Guideline.

9. Execution And Distribution Of Permit

See Chapter 9 of this Guideline.

FACT SHEET

UNDER WHICH A CONCESSION

(CONTRACT)(PERMIT)

WILL BE NEGOTIATED FOR THE (CONTINUED)

OPERATION OF _____ (TYPE OF SERVICES OFFERED)

FACILITIES AND SERVICES WITHIN

NATIONAL _____

DATE ISSUED: _____

DATE OFFERS DUE: _____

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

INSTRUCTIONS

ALL SECTIONS DENOTED BY

BRACKETS []

ARE OPTIONAL

NOTE: ALL INFORMATION TYPED IN BOLDFACE IS STANDARD AND
SHOULD BE USED IN ALL CASES.

PLEASE USE THESE SECTIONS DEPENDING ON
CIRCUMSTANCES INVOLVED.

FACT SHEET

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INTRODUCTION

In order that interested parties may submit a proposal pursuant to the notice published in the [Newspaper] [Federal Register] of _____ (Date) _____, the following information is given regarding the concession now being operated by _____ (Name of Concessioner) _____ at _____ (Name of Area) _____.

_____ (Name of Concessioner) _____ has been conducting certain concession operations under the immediate supervision of the Superintendent, _____ (Name of Area) _____, _____ (Telephone No.) _____, pursuant to a [long-term] concession [contract] [permit] which expires by limitation of time on _____ (Date) _____. Concessioners who have provided satisfactory service during the lifetime of their concession [contracts] [permits] enjoy, pursuant to the Act of October 9, 1965 (79 Stat. 969, 16 U.S.C. 20), a preference in the renewal of their [contracts] [permits] upon the expiration of [contracts] [permits] covering their operations. Since the incumbent concessioner has operated satisfactorily during the term of its [contract] [permit], it is the intention of the National Park Service to [renew the existing [contract] [permit] upon its expiration] [supersede and cancel the existing [contract] [permit] and enter into a new long-term contract with the concessioner] [as security for a [substantial] [construction and improvement] [repair and upgrading] program.]

[There are other concessioners authorized to operate concession accommodations, facilities and services for the public in _____ (Name of Area) _____, but these concessioners will not be affected by this proposal.]

NOTE TO PREPARER: Explanation as to why the NPS considers any pre-determined response period to be sufficient time for applicants to submit offers should be provided here.

[A Pre-Proposal Conference will be held on _____ (Date) _____ at _____ (Time) _____ in _____ (Place) _____. Applicants who wish to attend or who have questions concerning this Fact Sheet should contact _____ (Name) _____ on _____ (Phone Number) _____.]

The following information is provided to advise all interested parties of the requirements and conditions under which the operation(s) may be conducted.

GENERAL AREA DESCRIPTION

This section is to be prepared by the park, and should include a brief statement on the areas surrounding the park.

EXISTING CONCESSION

[Pursuant to Section 6 of P.L. 89-249, title to all buildings and structures utilized in the concession operations at the National Park System area within the purview of this fact sheet is by law vested in the United States. Some of these facilities are Government acquired or constructed and others are concessioner acquired or constructed. To determine the ownership of these buildings and structures for the purposes of the proposed [contract] [permit], please refer to Exhibits "_____" and "_____" attached to the proposed concession [contract][permit].]

The present concession consists of:

REQUIREMENTS

The concessioner shall be [required] [authorized]* to provide the services and facilities set forth in SEC. _____ of the attached [contract ^{1/}] [permit] under the following conditions.

(Requirements to be prepared by the park.

This section can include:

1. Special operating requirements (dates, opening and closing times, etc.)
2. Special maintenance requirements,
3. Statement on utilities if unusual circumstances exist,
4. Special franchise fee requirements,
5. NPS plans for Area

in addition to the following paragraphs.)

[CONSTRUCTION AND IMPROVEMENT PROGRAM] [FOR CONTRACTS ONLY]

[The proposed contract requires the concessioner to undertake a (construction and improvement) (repair and upgrading) (renovation) program costing not less than \$_____. This program shall include the following, and must be completed by the date(s) indicated in the proposed contract:]

* Under contracts the words "authorized" and "required" are used. Under permits the word "authorized" is used.

^{1/} The number of Section of Contract entitled "Accommodations, Facilities, and Services" should be put in blank.

TERM OF [CONTRACT] [PERMIT]

[The term of concession contracts under existing policies is to be commensurate with the size of the investment. [The [substantial] investment required for this concession warrants a term of approximately _____ (_____) years.] [Since the new contract will require [only a limited] [no] investment, a term of more than _____ (_____) years does not appear to be warranted.]

[Contracts negotiated for a term of five (5) years, or more or where the annual gross receipts are \$100,00 or more are required by law to be submitted to the Congress for SIXTY (60) days before they may be awarded.]

[Permits negotiated for a term of five (5) years, or where the annual gross receipts are \$100,000 or more are required by law to be submitted to the Congress for SIXTY (60) days before they may be awarded.]

OPERATING AGREEMENTS AND MAINTENANCE AGREEMENTS

An operating agreement and maintenance agreement will be concurred in during [contract] [permit] negotiations and renewed on no less than an annual basis with the appropriate changes developed by the Superintendent and the concessioner. The proposed maintenance and operating agreements are attached as enclosures ____ and ____.

RATES FOR SERVICES

Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowances for length of season, provision for peak loads, average percentage of occupancy, accessibility and cost of labor and material, type of patronage and other conditions customarily considered in determining charges, but due regard may also be given to such other factors deemed significant.

The current approved rates are attached hereto as Enclosure No. _____. All offerors must agree in their proposals to operate at such rates unless a new rate schedule is approved by the Secretary during the [contract] [permit]. Any alternative rate schedules submitted by offerors will not be considered in the evaluation of proposals received due to the fact that such rates are necessarily subject to change during the term of the (contract) (permit) when approved by the Secretary. (For further information on Rates, see the Section referring to rates in the enclosed proposed concession [contract] [permit].

NOTE TO PREPARER: If you plan on using method 3 of the rate process specifying the rate on the authorization, you may submit rate offers during the SOR process.

AGREEMENT ON REDUCED RATES TO GOVERNMENT EMPLOYEES ON OFFICIAL BUSINESS

Concessioners are to provide reduced rates to Government employees only while the employees are conducting official business, in order to benefit the Government by lowering travel expenses, permitting more effective program control, and maximizing use of Federal funds. Reduced rates for lodging and essential transportation may be provided directly to Federal employees (not family members). Reduced rates are not applicable under any circumstances for food or merchandise, including groceries, gasoline or other automobile needs. All reduced rates must be made part of the concessioner's approved rate schedule. See section _____ of the attached proposed contract.

UTILITIES

Rates for utility services furnished to concessioners by the National Park Service shall be based on operating costs (not including existing capital investments) or comparability, whichever is greater. Concessioners may be permitted to pass through to park visitors those costs which exceed comparability.

FRANCHISE FEE

The National Park Service has determined that in view of the privileges to be granted by the new (contract) (permit), and in view of the statutory provisions of P.L. 89-249, the new [contract] [permit] will require the Concessioner to pay a franchise fee rate of _____ percent (____%) of the annual gross receipts. [Permittees shall pay a franchise fee in the form of a flat fee.] If an offeror proposes to pay a higher percentage fee rate, the detailed financial projections for a three (3) year period, as required in the Statement of Qualifications of Applicants, Part IV, A, must substantiate the feasibility of the higher fee rate. Such higher fee rate, if supportable, will be given secondary consideration in the evaluation of all offers. [In order to promote the sale of genuine United States Native and Indian handcraft the new [contract] [permit] will specifically exclude from the franchise fee the gross receipts from such handcraft sales.]*

*To be used only when the concessioner is authorized to sell such items.

[In addition, the new [contract] [permit] will require the payment of a fee [based on the current fair value] [in the amount of _____ annually] for the use of [any] [the] Government-constructed or acquired buildings or improvements, assigned to the concessioner.]

[In addition, the new [contract] [permit] will require the payment of a fee for the use of the Government-constructed or acquired buildings and improvements assigned to the Concessioner. This fee will be adjusted from the present fee of _____ to reflect the current fair value as assigned through the appraisal process and will be provided as a revised Exhibit _____ in the final proposed [contract] [permit].]

INSURANCE

The proposed [contract][permit] requires the Concessioner to purchase and maintain fire and extended coverage insurance for full replacement value of those buildings, structures, equipment, furnishings and betterments and merchandise used in the operation. Exhibit _____ of the attached concession [contract] [permit] lists the buildings and structures and their full replacement values.

If more than one building is involved, a blanket policy may be proposed. If the applicant considers full replacement value insurance not economically feasible, he/she may propose a lesser insurance coverage such as a deductible, self-assumption, actual cash value or, in extreme cases, no insurance. Proposals for lesser coverages must be fully justified by providing rate quotations from an insurance broker together with a financial projection which demonstrates impact on the concessioner. Applicants who intend to make a proposal for lesser coverage are advised to obtain a complete copy of the NPS Insurance Program before doing so.

*[The concessioner is to purchase and maintain a Builders Risk Form Policy at the time construction commences.]

* Use only when developing a Fact Sheet for contracts.

The concessioner is also required to purchase and maintain comprehensive general liability insurance coverage, in the minimum amount of \$100,000 for bodily injury per person, \$_____ (\$100,000 x the potential risk) per occurrence and \$25,000 for property damage. The following additional liability coverages are required:

Applicants should review Section _____ of the attached concession [contract] [permit] and include his/her insurance proposal as Part _____.

Any applicant who wishes to obtain the National Park Service's complete Insurance Program Requirements should contact: _____.

POSSESSORY INTEREST*

Possessory Interest is the concessioner's partial ownership (compensable interest) in Government acquired or constructed facilities and ownership of concessioner acquired or constructed facilities. Under the proposed contract contemplated hereunder the concessioner shall have a possessory interest in improvements it makes to Government Improvements to the extent of book value pursuant to Section 4 of the proposed contract. Any improvements, including routine maintenance and repairs, should be made by the concessioner if such improvements are economically feasible. If not, they may be constructed by the National Park Service subject to the availability of appropriated funds. Such improvements made by the concessioner may be expensed or amortized.

Section 6 of the Act of October 9, 1965, P.L. 89-249 states that concessioners who acquire or construct, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service, shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title which shall be vested in the United States. The provision states further that possessory interests may not be extinguished by the expiration or other termination of the contract

* Use only when developing a Fact Sheet for contracts.

and may not be taken for public use without just compensation. Just compensation is defined as reproduction cost less appreciation, not to exceed fair market value, "unless otherwise provided by agreement of the parties." For the purposes of the concession contract contemplated hereunder just compensation is described in Section 12 of the enclosed proposed concession contract (Enclosure No.____).

ACQUISITION OF CONCESSION FACILITIES

[The facilities used in this operation are equipped and stocked for immediate operation. The equipment, personal property and inventories belong to the present concessioner. Any new concessioner will be required to provide such equipment, personal property and inventories as may be necessary for the proper and efficient operation of these facilities].

If a concession [contract] [permit] is to be negotiated with anyone other than the present concessioner, the proposed successor may arrange with the present concessioner for the purchase of any possessory interest, and other assets, including merchandise and inventories of the concessioner used or held for use in connection with the operations. Negotiations may be conducted directly with the incumbent concessioner, whose address is: _____

_____. In the event the interested parties do not agree on a price, procedures for arriving at a fair purchase price of facilities are provided in the following quoted section of the present contract:

(QUOTE SECTION OF EXISTING CONTRACT

ENTITLED

COMPENSATION)

Failure of the successful applicant to reach agreement upon the final terms of the purchase arrangement within a reasonable time after notification of selection by the National Park Service may constitute grounds for termination of such selection.

The National Park Service reserves the right to approve or disapprove both the qualifications of the prospective applicant and any purchase or financing arrangements.

The foregoing requirements represent the present objectives of the National Park Service in the area, but it is recognized that the specific details may be subject to amendment by mutual agreement between the Service and the concessioner.

SUBMISSION OF PROPOSALS

Prospective applicants may consult with the existing concessioner concerning financial matters. Prior arrangements with the concessioner should be made in this regard.

Attached hereto as Enclosure _____ is the proposed concession [contract] [permit] which sets forth the terms and conditions under which the concession operation is to be conducted. APPLICANTS SHOULD CAREFULLY CONSIDER THIS DOCUMENT AND THOROUGHLY READ THE INFORMATIONAL DOCUMENTS, ENCLOSURES 2, 3, 4 AND 5 BEFORE COMPLETING THE STATEMENT OF QUALIFICATIONS OF APPLICANT.

The format to be used for the applicant's transmittal letter is attached, and any additional comments of the applicant may be included therein. The STATEMENT OF QUALIFICATIONS OF APPLICANT must be used by all applicants in applying for the concession opportunity, and must be completed in accordance with the instructions contained therein. The applicant's proposal, i.e., the transmittal letter and STATEMENT OF QUALIFICATIONS OF APPLICANT should be submitted in such detail so as to facilitate a comprehensive analysis. All proposals, including that of _____ (existing concessioner), must be submitted to the (Superintendent) (Regional Director) _____ (address) _____ on or before

(Date) _____. Proposals submitted or postmarked after this due date will not be considered during the evaluation of offers and will be returned (unopened) to the sender. However, if it is determined to be in the best interest of the Government, the Service reserves the right to evaluate late proposals in the event that other proposals received are not satisfactory. Offers and modifications thereof shall be enclosed in sealed envelopes marked "BID PROPOSAL". In addition, the offeror shall show on the face of the envelope the date specified in the public notice for receipt by the National Park Service, and the name and address of the offeror.

The applicant selected by the National Park Service must agree to complete the negotiation and execution of a (contract)(permit) containing substantially the terms and conditions included in the proposed (contract)(permit) attached within a reasonable time after it is presented to the applicant.

EVALUATION OF PROPOSALS

In accordance with Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), the existing satisfactory concessioner is granted a right of preference in the renewal of his existing authorization and in the negotiation of a new (contract)(permit). This provision in effect, grants _____ (Present Concessioner) _____, the opportunity to meet or equal the terms and conditions of any other proposals submitted in response to this Fact Sheet which the Secretary may consider better than the proposal submitted by _____ (Present Concessioner) _____. If it is determined that there is a better offer and _____ (Present Concessioner) _____ amends its proposal and the amended proposal meets or equals the better offer, then the proposed new (contract)(permit) will be negotiated with _____ (Present Concessioner) _____. Managerial competence, conformance to the terms of the Fact Sheet in relation to quality of service to the visitor as well as financial ability will be prime factors in evaluating proposals.

If an applicant fails to complete any part of the Statement of Qualifications of Applicant the proposal will be considered by the National Park Service as being non-responsive.

All proposals submitted in response to this Fact Sheet may be disclosed by the Department of the Interior to any person upon request pursuant to the Freedom of Information Act. If the offeror believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the page of the proposal on which it appears and shall mark each page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal.

Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a (contract)(permit) is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

The National Park Service reserves the right to disregard any proposals submitted or to make any counter proposals which it may consider reasonable or desirable.

STANDARD LANGUAGE TO BE USED, WHERE APPLICABLE

IN CONCESSION CONTRACTS

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

--oooo0oooo--

(Name of Concessioner)

(Name of Area)

--oooo0oooo--

CONTRACT NO. _____ EXECUTED _____

COVERING THE PERIOD

THROUGH _____

Contract
No. _____

CORPORATION

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____ a corporation organized and existing under the laws of the State of _____ doing business as _____ hereinafter referred to as the "Concessioner":

PARTNERSHIP

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____ of _____, _____ and _____ of _____, _____ partners, doing business as _____ pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the "Concessioner":

SOLE PROPRIETORSHIP

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____ an individual of _____, _____ doing business as _____ hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, _____ (Name of Park, Recreation Area, etc.)
(hereinafter referred to as the "Area") is administered by the Secretary to
conserve the scenery and the natural and historic objects and the wildlife
therein, and to provide for the public enjoyment of the same in such manner
as will leave such area unimpaired for the enjoyment of future generations;
and

WHEREAS, the accomplishment of these purposes requires that faci-
lities and services be provided for the public visiting the area and that
all private interest shall be excluded except so far as may be necessary
for the accomplishment of said purposes, including accommodation of the
public; and

WHEREAS, the United States has not itself provided such necessary
facilities and services and desires the Concessioner to establish and
operate the same at reasonable rates under the supervision and regulation
of the Secretary: and

WHEREAS, the establishment and maintenance of such facilities and
services involves a substantial investment of capital and the assumption of
the risk of operating loss, it is therefore proper, in consideration of the
obligations assumed hereunder and as an inducement to capital, that the
Concessioner be given assurance of security of such investment and of a
reasonable opportunity to make a profit; and

WHEREAS, pursuant to law the Secretary is required to exercise
his authority hereunder in a manner consistent with a reasonable oppor-
tunity by the Concessioner to realize a profit on the operations conducted
hereunder as a whole commensurate with the capital invested and the obliga-
tions assumed:

NOW, THEREFORE, pursuant to the authority contained in the Acts
of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and October 9, 1965
(79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and
amendatory thereof, the said parties agree as follows:

SEC. 1. TERM OF CONTRACT.

(a) This contract shall *[supersede and cancel
Contract No. _____ effective upon the close of busi-
ness _____ 19__, and shall be for the term of
_____ (____) years from _____,
19____.

* To be used when existing contract is to be replaced, before expiration
time.

** (b) The Concessioner shall undertake and complete an improvement and building program costing not less than \$ _____ as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review." It is agreed that such investment is consistent with Section 3(a) hereof. Such improvement and building program shall include:

** (c) The Concessioner shall start the improvement and building program on or before _____ in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before _____.

** (d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the improvement program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

SEC. 2. ACCOMMODATIONS, FACILITIES AND SERVICES. (a) The Secretary requires and hereby authorizes the Concessioner during the term of this contract to provide accommodations, facilities, and services for the public within _____, as follows:

(Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request of the Secretary," is acceptable.)

(b) The Secretary reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations, and policies promulgated thereunder, whether now in force or hereafter enacted or pro-

** To be used where improvement programs are included in the contract. NOTE:
DO NOT USE Sec. 1, (b) (c) or (d), if there is No building program.

mulgated, including but not limited to the United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health.

*(c) During the term hereof and subject to satisfactory performance hereunder, the Concessioner is granted a right of first refusal to provide such additional concession accommodations, facilities and services of the same character as required and authorized hereunder as the Secretary may designate as necessary or desirable for accommodation and convenience of the public in the [description of the area(s) or that portion of the park in which a right of first refusal is to be granted] [delineated on Exhibit "C"]. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, accommodations or services and/or declines or fails within a reasonable time to comply with the designation of the Secretary, then the Secretary in his discretion may authorize others under substantially the same terms and conditions to provide such designated accommodations, facilities, or services. This right of first refusal does not apply to concession operations in connection with lands hereafter acquired which expand the existing boundary of the area. Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by other concessioners now authorized by the Secretary to provide accommodations therein for the public, including the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 3. PLANT, PERSONNEL, AND RATES. (a)(1) The Concessioner shall maintain and operate the said accommodations, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

* OPTIONAL -- To be included only where a preferential right to additional services is to be granted. This is discretionary and should be included only upon a specific determination that granting such is in the public interest.

(2) All rates and prices charged to the public by the con-cessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulations and approval by the Secretary. The Secretary shall exercise his decision making authority with respect to the Concessioner's rates and prices in a manner consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed. Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, [average percentage of occupancy],* accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

(b)(1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(3) The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 as amended in 1978, (c)

* This should be used only in contracts involving lodging.

41 CFR, Part 60-2 which prescribes affirmative action requirements for contractors and subcontractors, (d) the Age Discrimination in Employment Act of December 15, 1967 (P.L. 90-202), as amended by P.L. 95-256 of April 6, 1978, and (e) the Architectural Barriers Act of 1968 (P.L. 90-480) which requires Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals and to make facilities accessible to or usable by handicapped persons so that they will not be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment and use of their facilities. Regulations heretofore promulgated are set forth in Exhibit "B" attached hereto and made a part hereof.

SEC. 4. GOVERNMENT LAND AND IMPROVEMENTS. (a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land and Government Improvements, if any, (as described in Exhibit "A" hereto) necessary to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or part thereof at any time during the term of this contract if, in his judgement, (1) such withdrawal is necessary for the purpose of protecting visitors or area resources, or, (2) the operations utilizing such assigned lands are terminated pursuant to Section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to Section 11 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such withdrawn properties at book value as described in Section 12 hereof, or, in the event that Concessioner Improvements in which the Concessioner has a possessory interest are to be replaced by the Concessioner within the area, in accordance with fair value compensation for possessory interest described in subsection 12(b) hereof.

(b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the Government and provided by the Government for the purpose of this contract. The Concessioner shall have a possessory interest in improvements it makes to Government Improvements. In the event that such possessory interest is acquired by the Government or a successor Concessioner at any time the Concessioner will be compensated for such possessory interest pursuant to Section 12 hereof.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the Government services therein.

(d) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(e) If during the term hereof a Government Improvement requires repairs or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair, such capital investment shall be borne by the Government subject to the availability of appropriated funds. If appropriated funds are not available, and the Secretary determines that such repairs or improvements are necessary to a satisfactory performance of the Concessioner's obligations hereunder, the Concessioner may be required to repair the Government Improvement subject to the limitations on investment set forth in Section 3(a) hereof.

SEC. 5. MAINTENANCE. Subject to Section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both Government and Concessioner's Improvements) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out jointly by the Secretary and the Concessioner.

SEC. 6. CONCESSIONER'S IMPROVEMENTS. (a) "Concessioner's Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract, (excluding improvements made to Government Improvements by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. Concessioner's Improvements do not include any interest in the land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all Concessioner's Improvements recognized by this contract. Possessory Interest shall consist of all incidents of ownership, except legal title which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract and may not be terminated or taken for public use without just compensation as determined in accordance with Section 12. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 12 hereof shall constitute just compensation with respect to the taking of a possessory interest in the circumstances therein described.

(c) Any salvage resulting from the authorized removal, severance, or demolition of a Concessioner's Improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a Concessioner's Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner shall promptly upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

SEC. 7. UTILITIES. (a) The Secretary shall furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary, in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should any such service not be available or sufficient, the Concessioner may, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or may install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law. Such water rights, upon expiration or termination of this contract for any reason shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the Government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Government for such service shall be approximately the average cost per unit of providing such service.

(3) All appliances, and machinery to be used in connection with the privileges granted in this section, as well as the plans for location and installation of such appliances and machinery shall first be approved by the Secretary.

SEC. 8. ACCOUNTING RECORDS AND REPORTS. (a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with the System of Account Classification prescribed by the Secretary. The Concessioner shall submit annually as soon as possible but not later than _____ (_____) days after the _____ day of _____ a financial statement for the preceding year* as prescribed by the Secretary, and such other reports and data as may be required by the Secretary. If annual gross receipts are in excess of \$1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between \$250,000 and \$1 million, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants.

Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent to those included in the Federal and state tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioners, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

*ADD: "or portion of a year" if execution date does not make up full fiscal year or calendar year for concessioner.

*(b) Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary **[a balance sheet as of the beginning date of the term of this contract. The balance sheet shall be audited by an independent certified public accountant or by an independent licensed public accountant, certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970. The balance sheet shall be accompanied by] a schedule that identifies and provides details for assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the close of business year of the Concessioner and any subconcessioner have access to and the right to examine any of the pertinent books, documents, papers, and records related to this contract including Federal, and state income tax returns.

SEC. 9. FRANCHISE FEE. (a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein as follows:

(1) An annual fee for the use of any Government Improvements utilized by the Concessioner hereunder, if any. Such fee and assigned Government buildings to be as set forth in Exhibit "A" hereto but in no event shall the fee exceed the fair annual value of such Government Improvements as determined by the Secretary.

(2) In addition to the foregoing, a further sum equal to _____ PERCENT (____%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b) The franchise fee shall be due on a monthly basis in such a manner that payment shall be received by the Secretary within 15

* OPTIONAL -- Subsection 8(b), in its entirety, may be excluded where the Concessioner has no acquired possessory interest assets involved and no balance sheet is required.

** [] DELETE this section for FACT SHEETS when Balance Sheet is not required.

NOTE TO PREPARER: Use section NOT bracketed if Concessioner has possessory Interest.

days after the last day of each month that the concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as set forth in Exhibit "A" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due.

(c) An interest charge will be assessed on overdue amounts for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d)(1) The term "gross receipts," as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales, including those through vending machines and other coin-operated devices, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from the sale of genuine United States Indian and native handcraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), [charges for employees' meals, lodgings, and transportation] cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Governmental agencies.*

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, including that through vending machines or other coin-operated

* NOTE TO PREPARER: This means, for example, if fishing licenses are sold \$2.00 goes to State or Federal agency, \$.25 goes to concessioner. Only \$2.00 can be excluded from gross receipts, i.e., fishing license cost to user \$2.00 but concessioner sells them and charges \$.25 for services.

devices, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the _____ day of _____ of each year.* The subconcessioner shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

** (e) Within sixty (60) days after the end of each five year period of this contract or as otherwise specified, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section may be reconsidered. Such request shall be made in writing within 60 days after the end of the applicable contract year but cannot be made before the end of such year. In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees consistent with the fair value of any assigned Government Improvements and the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested. If desired by the Concessioner an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees shall be final and conclusive upon the parties hereto. Any new fees established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract unless subsequent negotiations establish yet a different franchise rate. If new rates are greater than existing rates, the Concessioner will pay all back fees due with the next regular payment. If new rates are less than the existing rate the Concessioner may withhold the difference between the two rates from future payments until he

* ADD: "or portion of a year" if execution date doesn't make up full year for concessioner.

** DELETE WHOLE PARAGRAPH (subsection 9(e) if contract is only for 5 years.

has recouped the overpayment. Any new franchise fees will be evidenced by an amendment to the contract unless based upon the written determination of the Secretary in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

SEC. 10. BOND AND LIEN. The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate, not in excess of _____ DOLLARS *(\$_____). As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

SEC. 11. TERMINATION. (a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the protection of visitors or area resources. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to protect the health and safety of visitors and employees or to protect area resources. Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies. Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the protection of visitors or area resources or for default, the compensation to the Concessioner for such termination shall be as described in Section 12, "Compensation".

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages or other monies which may be claimed.

* If a bond is required it should not, under normal conditions, exceed the amount of franchise fees which may be due. (Leave blank where there has been no past operator because no dollar amount can be determined.)

(d) To avoid interruption of service to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the Concessioner's Improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation on such improvement and personal property plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this instance the method of depreciation used shall be either straight line depreciation or depreciation shown on Federal Tax Returns.

SEC. 12. COMPENSATION. (a) Just Compensation: The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued: If for any reason, including contract expiration or termination as described herein, and subject to the limitation on compensation for possessory interest contained in subsection (d) hereof, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in Concessioner and Government Improvements, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof. The fair value of any possessory interest in Government Improvements shall be book value as described in Section 12(c) hereof. In the event that such possessory interest in Government Improvements is acquired by a successor, the successor will not be permitted to revalue such possessory interest. The fair value of possessory interest in Concessioner's Improvements shall be deemed to be the sound value of the improvement to which it relates at the time of transfer of such possessory interest, without regard to the term or other benefits of the contract.

The sound value of any structure, fixture, or improvement shall be determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The fair value of merchandise and supplies shall be replacement cost including transportation. The fair value of equipment shall be replacement cost less depreciation and obsolescence. If the Concessioner and the successor, excepting Government agencies, cannot agree upon the fair value of any item or items, either party may serve a request for arbitration upon the other party, and the fair value of the item or items in question shall be determined by the majority vote of a board of three arbitrators, selected as follows: Each party shall name one member of such board and the two members so named shall select the third member. If either party fails to appoint an arbitrator within 15 days after the other shall have appointed an arbitrator and served written notice, including the name and address of the arbitrator appointed, upon the other party, then the American Arbitration Association shall be requested by the Secretary to appoint an arbitrator to represent the party failing to make the appointment. The costs and expenses of the arbitrator appointed by the American Arbitration Association to represent the party failing to make the appointment shall be paid for by that party. The two arbitrators so named shall select the third member. If the third member is not selected within 15 days after the appointment of the latter of the other two arbitrators, the American Arbitration Association shall be requested by the Secretary to appoint the third arbitrator. In requesting that the American Arbitration Association appoint an arbitrator in the situations discussed above, the Secretary shall request that the person or persons appointed shall be impartial and specially qualified in commercial and real estate appraisal. The fair value determined by the Board of Arbitrators shall be binding on the parties. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute. If the successor is a Government agency and there is a dispute as to the fair value of any possessory interest, or other items, an advisory arbitration panel will be established at the request of the Concessioner (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary an appropriate fair value. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written decision of the Secretary as to such fair value will be final and binding upon all parties.

(c) Contract expiration or termination where operations are to be discontinued: If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to

discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove, or demolish any of the Concessioner's Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its possessory interest in Concessioner Improvements, and Government Improvements, if any, in the amount of their book value (unrecovered cost as shown in Federal Income Tax Returns); (ii) the cost to the Concessioner of restoring any assigned land to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefor.

(d) Contract Termination for Default for Unsatisfactory Performance Where Operations are to be Continued. Notwithstanding any provision of this contract to the contrary, in the event of termination of this Contract for default for failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in Concessioner's Improvements, if any, shall be at book value as described in Subsection 12(c) herein.

(e) Other Compensation. In the event of termination of this contract or portions thereof, for the purpose of protecting visitors or area resources the Concessioner may be compensated (in addition to the applicable compensation described in subsections (b) or (c) above) for such other costs as the Secretary, in his discretion, considers necessary to compensate the Concessioner for actual losses occasioned by such termination, including, but not limited to, and as the needs appear, cost of relocating from one building to another building, reasonable severance pay to employees that may be affected, penalties for early loan repayments, and reasonable overhead expenses required by such termination, but, not for lost profit or other anticipated gain from the operations authorized hereunder or anticipated sale or assignment of the Concessioner's assets, including this contract or any of its benefits.

SEC. 13. ASSIGNMENT OR SALE OF INTERESTS. (a)(1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this Contract or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including, without limitation mergers, consolidations, reorganizations or other business combinations) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's

ownership, as defined herein, without the prior written approval of the Secretary. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Contract for which this Contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 11 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this Contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction described in Subsection (a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request the Secretary's approval of the proposed transaction and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction.

(b)(1) The Secretary, in exercising the discretionary authority set forth herein, shall among other matters, take into consideration the management qualifications of individuals or entities which would thereby obtain an interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the concession operations authorized hereunder in the public interest under the regulation of the Secretary.

(2) For purposes of this section, the term "controlling interest" in a Concessioner's ownership shall mean, in the instance of a corporate concessioner, an interest beneficial or otherwise, of sufficient out-standing voting securities or capital of the Concessioner so as to permit exercise of substantial managerial influence over the operations of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, any beneficial ownership of the capital assets of the Concessioner sufficient to permit substantial managerial influence over the operations of the Concessioner. The Secretary will determine at the request of interested parties whether or not an interest in a Concessioner constitutes a controlling interest within the meaning hereof.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Secretary at least 30 days in advance of such transaction.

(d) No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon, the assets of the concessioner, including this contract, in the area, shall be issued,

except for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such assets, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such assets but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

SEC. 14. APPROVAL OF SUBCONCESSION CONTRACTS. All contracts and agreements (other than those subject to approval pursuant to section 13 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. In the event any such subconcession contract or agreement is approved the Concessioner shall pay to the Secretary within _____ days after the _____ day of _____ each year* a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of sub-concessioners as provided in Section 9 of this contract.

SEC. 15. INSURANCE AND INDEMNITY.

(a) General

The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgements and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors or agents under the contract. The types and amounts of insurance coverage purchased provide the Secretary with Certificates of Insurance, Broker's Analysis or similar documents sufficient to evidence compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the concessioners insurance program hereunder.

* ADD: "or portion of a year" if execution date doesn't make up full year of concessioner.

(b) Property Insurance The Concessioner at its cost shall secure and maintain, for both Concessioner improvements and assigned government improvements, fire, extended coverage and such other perils insurance in such types and limits as are determined by the Secretary to be necessary to repair or replace those buildings, structures, equipment, furnishings, betterments and improvements, and merchandise necessary to satisfactorily discharge the Concessioner's obligations under this Contract. For insurance purposes, values of such property shall be determined at the inception of this contract and updated annually thereafter. Those values currently in effect are set forth in Exhibit "E" to this contract. Such insurance shall provide for the Concessioner and the United States of America to be named insureds as their interest may appear. Insurance provisions respecting replacement at the "same site" shall be waived. In the event of loss the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner and Government Improvements, equipment, furnishings and other personal property hereunder, as directed by the Secretary. The lien provision of Section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages:

* Flood	Boiler & Machinery	Earthquake
_____	_____	_____
_____	_____	_____

(c) Additional Property Damage Requirements -- Government Improvements, Property and Equipment. The following additional requirements shall apply to structures, all or any part of which are "government improvements" as defined in Section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the Secretary which provides that insurance proceeds shall be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of government structures will not alter their character as government structures and the concessioner shall gain no possessory interest therein.

* If contract is to accompany a Fact Sheet or Prospectus, leave blank so that amounts may be proposed by applicant. In final contract, list only applicable coverages with amounts.

(d) Public Liability. The Concessioner shall purchase and maintain during the term of this contract Comprehensive General Liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operations authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event not less than (\$_____)** for bodily injury per person and (\$_____) ** per accident and property damage of at least (\$_____)** per occurrence. All liability policies are to specify that the insurance company shall have no right of subrogation against the United States of America except that caused by the sole negligence of the United States or its employees and have no recourse against the government for payment of any premiums or assessments.

Specific types of coverages the Concessioner shall purchase and maintain during the term of this contract include Comprehensive General Liability, with extensions which provide Product Liability and Contractual Liability and Liquor Liability if liquor is served.

The Concessioner shall also obtain the following additional coverages:

a. Automobile Liability. The Concessioner shall provide the following coverages respecting vehicles owned and/or operated by the Concessioner: Comprehensive Automobile Liability, Uninsured Motorist coverages, and Statutory "No-Fault" coverages, as required by the state of operation.

b. Workers' Compensation. Statutory Workers' Compensation as required in the state of operation, Employers' Liability coverage (Broad Form "All State" coverage, if the Concessioner operates in more than one state)*, Voluntary Compensation endorsement, and (Employers' Liability in states with monopolistic Workers' Compensation funds).*

c. Other. The Concessioner shall also obtain the following coverages, in at least the limits set forth for Comprehensive General Liability.

*Protection and Indemnity (Watercraft Liability)

*Aircraft Liability

*Umbrella Liability Policy, (Limits _____)

** The absolute lowest acceptable minimums which can be accepted are \$100,000 bodily injury per person, \$100,000 per accident, and \$25,000 property damage. In most cases these amounts should be substantially higher. SEE CONCESSION GUIDELINE FOR FURTHER DISCUSSION.

* List only coverages applicable to this concessioner.

SEC. 16. PROCUREMENT OF GOODS, EQUIPMENT, AND SERVICES. In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 17. DISPUTES. (a) Except as otherwise provided in this contract, any dispute, or claim, concerning this contract which is not disposed of by agreement shall be decided by the Director, National Park Service, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Concessioner. The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Director a written notification of appeal addressed to the Secretary. In accordance with the rules of the Board of Contract Appeals, the decision of the Secretary or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Concessioner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute or claim hereunder, the Concessioner shall proceed diligently with the performance of the contract or as otherwise required in accordance with the Director's decision.

Claims shall be considered hereunder only if a notice is filed in writing with the Director within 30 days after the Concessioner knew or should have known of the facts or circumstances giving rise to the claim.

(b) This section does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law

(c) The provisions of this clause shall not apply to any claim of a precontractual nature nor of a non-contractual nature such as tort claims, nor with respect to discretionary acts or refusals to act by the United States, including but not limited to the establishment of utility rates and rates to the public hereunder and terminations or suspensions of the contract for protection of visitors or area resources nor to any other discretionary relief or action, nor in relation to action or inaction by the United States in its sovereign capacity. Decisions of the Director, National Park Service, concerning the matters mentioned in this subsection shall be final administrative determinations.

SEC. 18. GENERAL PROVISIONS. (a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The Concessioner is not entitled to be awarded or to have sole negotiating rights to any Federal procurement or service contract by virtue of any provision of this contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations any accommodations, facilities or services to area visitors which are part of and appropriate to the park interpretive program.

(d) That any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at _____, this _____
day of _____, 19____.

UNITED STATES OF AMERICA

BY _____
Regional Director

CORPORATIONS

ATTEST: _____ (Concessioner)
BY _____ By _____
Title _____ Title _____
Date _____

SOLE PROPRIETORSHIP

WITNESSES: _____ (Concessioner)
NAME _____
ADDRESS _____
NAME _____
ADDRESS _____ DATE _____

PARTNERSHIP

WITNESSES AS TO EACH: _____ (Concessioner)
NAME _____ (NAME)
ADDRESS _____ (NAME)
NAME _____ DATE _____
ADDRESS _____

CONCESSIONS

NPS-48

Renewal Process For Concession Authorizations (Fact Sheet)

EXHIBIT 2

Chapter 6

Page 25

EXHIBIT "A"

GOVERNMENT-OWNED STRUCTURES ASSIGNED TO

(CONCESSIONER)

Pursuant To

CONCESSION CONTRACT NO. _____

Building
Number

Description

Annual
Fee

\$

Total amount due pursuant to
subsection _____

Approved, effective _____,
BY: _____

(NAME OF CONCESSIONER)

UNITED STATES OF AMERICA

BY _____

Title _____

Regional Director

(REGION)

EXHIBIT "B"

CONCESSION
AUTHORIZATION NO.:

NONDISCRIMINATIONSECTION I
REQUIREMENTS RELATING TO EMPLOYMENT
AND
SERVICE TO THE PUBLIC

A. EMPLOYMENT: During the performance of this concession contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates

gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated

September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II

ACCESSIBILITY

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the ser-

vice or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U. S. Postal Service.

PART A

DISCRIMINATION PROHIBITED

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.

PART B

EXISTING FACILITIES

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

EXHIBIT "C"

AREA OF PREFERENTIAL RIGHT

NOTE TO PREPARER: If the Concessioner has preferential rights to additional services, you would insert a map in place of this Exhibit page.

EXHIBIT "D"

Pursuant to Subsection 6(a)(1)

NOTE TO PREPARER: If the Concessioner has no possessory interest assets, put "NONE" on this page.

You will ALWAYS use this EXHIBIT, either with a schedule of possessory interest assets, or with the words "NONE", but NEVER LEAVE THIS EXHIBIT OFF THE CONTRACT.

EXHIBIT "E"

BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

CONCESSIONER: _____

CONCESSION CONTRACT NO.: _____

The replacement costs set forth herein are established for the sole purpose of insuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

I. GOVERNMENT BUILDINGS

<u>Building No.</u>	<u>Description</u>	<u>Insurance Replacement Value</u>
---------------------	--------------------	--

II. CONCESSIONER BUILDINGS

<u>Building No.</u>	<u>Description</u>	<u>Insurance Replacement Value</u>
---------------------	--------------------	--

(NAME OF CONCESSIONER) _____

UNITED STATES OF AMERICA

By _____

Title _____

Date _____

Regional Director _____

(REGION)



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

SAMPLE MEMORANDUM

C3823(680)

Memorandum

To: Chief, Administrative Services Division, WASO

From: Regional Director, Anywhere Region

Subject: Public Notice, Concession Contract, Harper Valley PTA,
Harper Valley National Recreational Area

There are enclosed an original and three (3) double spaced copies, with original signatures, of a proposed Notice of Intention to negotiate a concession contract with the Harper Valley PTA, authorizing it to continue to provide concession facilities and services for the public at Harper Valley National Recreational Area for a period of ten (10) years from January 1, 1990, through December 31, 1999.

The proposed notice, which has received written, legal clearance by the Field Solicitor's Office (copy enclosed), is satisfactory, and is for publication in the "Federal Register."

Enclosures

SAMPLE PUBLIC NOTICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICENotice of Intention to Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to [negotiate] [extend] a concession [contract][permit] with (EXISTING
(CONCESSIONER) authorizing it to continue to provide
(i.e., marina, boating, food service, lodging, etc.) facilities and services for the public at (NAME OF AREA) National Park,
(STATE) for a period of () years from
(DATE), 19 , through (DATE), 19 .

[This (contract)(permit) (renewal) (extension) has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.]

[This proposed (contract)(permit) requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the National Environmental Policy Act document (NAME & DATE OF DOCUMENT) that was prepared in conjunction with the (General Management Plan) or (Development Concept Plan) for (NAME OF AREA).]

[An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the (NAME OF OFFICE).]

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on (DATE), and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the [contract] [permit] and in the negotiation of a new [contract] [permit].

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner,

must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, _____
Region, _____ (CITY, STATE) _____, for information as to the
requirements of the proposed [contract] [permit].

Smoky L. Baer
Regional Director, Anywhere Region

Date _____



United States Department of the Interior

NATIONAL PARK SERVICE

WASHINGTON, D.C. 20240

IN REPLY REFER TO:

SAMPLE LETTER TO MBDA TRANSMITTING COPY OF
FACT SHEET

Mr. Victor M. Rivera
Director
Minority Business Development Agency
Department of Commerce
14th and Constitution Ave., N.W.
Rm. 5051
Washington, D.C. 20230

Dear Mr. Rivera:

Under agreement of September 4, 1973, between the National Park Service and Office of Minority Business Enterprise, the National Park Service is announcing that it will issue a Fact Sheet in the near future under which a 20-year concession contract will be negotiated for the continued operation of the concession operations that are now being operated by _____ (Name of Concessioner) _____, at _____ (Name of Park) _____, _____ (State) _____.

The foregoing concessioner has performed its services in a manner satisfactory to the Secretary under an existing contract which expires(d) by limitation of time on _____ (Date) _____.

Accordingly, we are pleased to enclose an advance copy of the proposed Fact Sheet. The public notice of our intention to negotiate a concession contract is in line for publication in the "Federal Register."

Sincerely yours,

Regional Director
South Atlantic Region

Enclosure



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

SAMPLE LETTER TO CONCESSIONER TRANSMITTING
FACT SHEET

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Forest Ranger
President
Ranger Products Forever, Inc.
100 International Building
P.O. Box 782
Anywhere, U.S.A. 11001

Dear Mr. Ranger:

The notice of intention to negotiate a concession [contract] [permit] with Ranger Products Forever, Inc., for its operations at Anywhere National Park, U.S.A., was published in the "Federal Register" on May 5, 1984. A copy of that notice is enclosed. Also enclosed herewith is a copy of a Fact Sheet prepared by the National Park Service stating the requirements and conditions under which we propose to continue the operation.

In connection with the negotiation of a new [contract] [permit] for these operations, we should like to call your attention to Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), which provides as follows:

"Sec. 5. The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, ***, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof.

This provision in effect, grants Ranger Products Forever, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Ranger Products Forever, Inc. In this regard, your proposal to continue operations should be submitted to the Regional Director, South Atlantic Region, before the due date specified in the enclosed Fact Sheet. Please complete and submit as your proposal the transmittal letter and the Statement of Qualifications of Applicant that are attached to the Fact Sheet.

Failure to submit a proposal by the due date specified may result in a successor being selected in the event another proposal is received.

Sincerely,

Associate Regional Director,
Park Operations
South Atlantic Region

Enclosure

Form 10-112 (Page 1)
(Rev. July 1981)

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Concession Permit

PERMIT NO. _____

This Concession was previously authorized pursuant to
PERMIT NO. _____

NAME OF CONCESSIONER: _____
(Type or Print Clearly)

dba _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE NUMBER: _____
(Area Code and Number)

The above, hereinafter referred to as "Concessioner", is hereby authorized and agrees to provide _____
for the public within _____

. This permit shall be for the term of _____ (_____)

YEARS from _____, Through _____,
subject to the following terms and conditions:

1. **Revocation.** It is expressly understood and agreed that this permit may be revoked or amended at any time at the discretion of the Director.

2. **Transfer or Assignment.** The Concessioner shall neither transfer nor assign this permit, nor grant any interest or privilege therein without prior written approval of the Director.

3. **Facilities and Services.** The Concessioner shall maintain and operate the concession in such manner as the Director may deem satisfactory and shall provide the plant if not provided by the Service, personnel, equipment, goods, and commodities necessary therefor.

4. **Rates.** All rates and prices charged to the public by the Concessioner shall be subject to regulation and approval by the Service. A schedule of rates shall be filed in duplicate with the Director and shall be adhered to until a revised schedule is approved.

5. **Lands and Buildings.** The Director, retaining right of entry, hereby assigns for use by the Concessioner:

6. **Improvements by Concessioner.** The Concessioner may construct or install upon the assigned lands such improvements as are necessary or desirable for the operations permitted hereunder, subject to prior approval by the Director of the location, plans, and specifications thereof. Upon termination of this permit, or termination of any renewal thereof, the Concessioner shall remove any such improvements and shall restore the site thereof to as nearly a natural condition as possible at no cost to the United States of America. Any such improvements as have not been removed by the Concessioner within six (6) months following termination of this permit, or termination of any renewal thereof, shall become the property of the United States without compensation therefor. However, if any such improvements are required to be removed by the Director upon the termination of the permit, and the Concessioner fails to do so within the aforesaid six (6) months, they may be removed by the Director and the Concessioner agrees to pay the cost of such removal.

7. **Accounting Records and Reports.** The Concessioner shall maintain such accounting records as may be prescribed by the Service. It shall submit not later than sixty (60) days after the _____ day of _____,

(Copy for Division of Concessions Management, WASO)

Form 10-112 (Page 2)
(Rev. July 1981)

a financial report for the preceding year in the format prescribed by the Service and such other data as may be required by the Service. The Service shall have the right to examine the Concessioner's records to verify all such reports. The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the permit or permits involved.

8. **Insurance and Indemnity.** Required provisions with respect to Insurance and Indemnity under this permit are set forth in Exhibit "A" attached hereto and made a part hereof.

*9. **Utilities.** ~~The Director may furnish utilities to the Concessioner for use in connection with the operation authorized hereunder, when available, at reasonable rates to be fixed by the Director in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Director in effect at the time of billing.~~ (See Below)

10. **Lien.** As security for the faithful performance by the Concessioner of all of its obligations under this permit, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

11. **Nondiscrimination.** The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Section 503 of the Rehabilitation Act of September 26, 1973, P.L. 93-112, which requires Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals, and with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and in providing facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment. Regulations heretofore promulgated are set forth in Exhibit "B" attached hereto and made a part hereof.

12. **General Provisions.** (a) Operations under this permit shall be subject to the laws of Congress governing the area and rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(c) Reference in this permit to the "Director" shall mean the Director of the National Park Service, and the term shall include his duly authorized representatives. Reference in this permit to the "Service" shall mean the National Park Service.

(d) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise herefrom but this restriction shall not be construed to extend to the permit if made with a corporation or company for its general benefit.

13. **Franchise Fee.** (a) An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) The franchise fee shall be as follows:

Dated at _____, this _____ day of _____, 19__.

*9. **UTILITIES.** The Director may furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Director in his discretion and which shall at least equal the actual cost of providing the utility or service unless a UNITED STATES OF AMERICA reduced rate is provided for in an established policy of the Director in effect at the time of billing.

BY _____

(Concessioner)

BY _____

TITLE _____

TITLE _____

DATE _____

NEW AUTHORIZATION PROCESS - CONTRACTS AND PERMITS (PROSPECTUS)

A. CONTRACTS

1. Introduction

A prospectus is issued when seeking a new concession operator, either for the development of new concession facilities or when it is necessary to secure a concessioner to replace an existing unsatisfactory concessioner or to replace an existing concessioner who no longer desires to operate. However, the latter may also be accomplished by a direct sale and transfer of the unexpired term of the contract under the conditions set forth in Chapter 11, paragraph F. The purpose of preparing a prospectus is to state the plans and programs of the Service in an attractive and informative way to encourage all interested parties to submit responsive offers to provide and operate the proposed concession.

The preparation of a prospectus requires thorough prior planning. (See Chapter 4 for information regarding the planning for new visitor services and facilities.) In addition, when the construction of new facilities is being proposed and/or a substantial investment is contemplated, an economic feasibility study should be completed prior to the preparation of the Prospectus. (See Chapter 3, paragraph F of this Guideline.)

All prospectuses leading to the negotiation of a contract/permit will be issued for a minimum period of sixty (60) days. Any deviation from this policy, must have the prior written approval of the Director. See 36 CFR, Part 51, in Chapter 5, Paragraph B.2 of this Guideline.

The Director may negotiate a concession contract/permit with any qualified party without public notice or advertising if it is determined that exceptional circumstances warrant waiver of the prospectus requirement and that it is in the public interest to provide the services or to protect park resources. Any request for deviation from the prospectus requirement must be in writing and have prior written approval from the Director.

A sample time table (flow chart) showing what, how and when the new authorization process should begin can be found in Chapter 4, Exhibit 2 of this Guideline. The following information should be used to begin preparation of the prospectus and proposed contract.

2. Establishment Of Contract Requirements

Once the relevant descriptive and planning data (as discussed in Chapter 4) have been gathered, the Park or Region commences the development of the contract requirements. The following concerns should be covered:

a. Recommendations should be made on the following provisions:

- Term of contract
- Building and Improvement Program
- Service and accommodations
- Franchise Fee
- Building Use Fee
- Maintenance & Operating Agreements (consideration for Concessioner and Government-Owned facilities)
- Utilities
- Compensation

b. Tie contract recommendations to the planning process and provide any additional data in support of contract term, franchise fee, etc. This would include any special studies such as economic feasibility, marketing studies, financial reviews, etc., that have been carried out.

c. Any particular maintenance or operational concerns that need to be considered in the contract negotiations.

3. Preparation Of The Prospectus

As soon as the above determinations have been made, a prospectus is prepared using the format for prospectuses provided in Exhibit 1 to this Chapter. The words, sentences and paragraphs that are bracketed are to be used or deleted as applicable to the particular concession and contract situation. This data will vary depending upon the type and extent of operations, conditions applicable to possessory interest if an existing concession is involved, and other factors.

4. Preparation Of Proposed Contract

Concurrent with the preparation of the prospectus, a proposed contract is drafted using the standard contract language found in Chapter 6, Exhibit 2. The contract is to be drafted to coincide with the prospectus requirements. Any deviations from the standard contract language must be approved in advance in writing by the Director.

5. Preparation Of Supplemental Contract Documents

Supplemental contract documents are those documents such as maintenance and operating agreements which provide the details and specifics of how the concessioner will operate and maintain its facilities within the framework of the contract language. These should be drawn up and included with the prospectus package and negotiated with the successful applicant during the contract negotiations. Only in this way can there be assurance that the concessioner understood and accepted all obligations prior to entering into the contract.

6. Procedures For Finalizing The Prospectus

When all of the above documents are completed, they are to be assembled into the final prospectus package which shall consist of a double folder. Documents on the right side shall include those directly applicable to the proposed contract as follows:

- a. ENCLOSURE NO. 1 - Prospectus
- b. ENCLOSURE NO. 2 - Statement of Qualifications (To be filled out by all applicants)
- c. ENCLOSURE NO. 3 - Applicant's Transmittal Letter
- d. ENCLOSURE NO. 4 - Proposed Contract w/accompanying exhibits
- e. ENCLOSURE NO. 5 - Current Rate schedule (if there is existing concessioner)
- f. ENCLOSURE NO. 6 - Proposed Maintenance Agreement
- g. ENCLOSURE NO. 7 - Proposed Operating Agreement
- h. ENCLOSURE NO. 8 - Any other supplemental contract documents.

Documents on the left side of the folder include general information applicable to NPS concessions policy.

- a. ENCLOSURE NO. 9 - Policies affecting negotiation of contracts/permits.
- b. ENCLOSURE NO. 10 - P.L. 89-249
- c. ENCLOSURE NO. 11 - NPS Handcrafts, Gifts and Merchandise Policy
- d. ENCLOSURE NO. 12 - General Information Statement on the Granting of Concessions

A permanent negotiation file must be established in the Region and Park containing the documents listed in Chapter 6, Paragraph A.6 along with all other correspondence, information and studies relating to the proposed contract.

The prospectus and proposed contract must be reviewed for legal sufficiency by the Regional Solicitor prior to public distribution of the prospectus package or publication of the press release.

7. Press Release And Distribution

Immediately after the review and concurrence of the Regional Solicitor, the Region will send an advance copy of the prospectus to the Minority Business Development Agency (MBDA), formerly OMBE.

The Regional Office issues all press releases to the public advising that a concession opportunity is available. In doing so, the following steps should be taken:

a. Approximately 7 days prior to the issuance date of the prospectus, an appropriate supply of copies will be forwarded to the Superintendent, together with copies of any press release to be issued and a list of applicants to whom copies are to be sent from the Regional Office.

b. Prior to the date that the prospectus is to be released, the Region will mail copies to the Congressional Delegation for the State or States involved, in order that the Senators and appropriate Representatives will have in hand the information at the time the prospectus is released to the public.

c. Issue a press release on the concession opportunity with a summary of the salient points to newspapers in the vicinity of the park. The press release should allow a minimum of at least 60 days for public response, unless a written determination is made that a shorter period is necessary because of exceptional circumstances. Notwithstanding the foregoing, all prospectuses must explain why the NPS considers any predetermined response period to be sufficient time for applicants to submit offers.

d. Simultaneous with the issuance of the press release, copies of the prospectus may be forwarded to all interested parties. However, because some Regions feel that it is too costly to send copies of the prospectus to everyone on the mailing list, a copy of the press release may be sent to interested parties on the list and copies of the prospectus can be mailed upon request. In addition to the applicants on Park and Regional Office lists, a list should be requested by the Region from WASO to assure all interested parties are advised of the opportunity. This should be done in sufficient time to permit mailing to all parties on the issue date.

e. Simultaneous with the release of the prospectus, the Region will provide a copy of the prospectus and press release to the Washington Office.

B. PERMITS

1. Establishment Of Permit Requirements

As with contracts, a prospectus is issued seeking a new concession operator either for the establishment of new concession services or to assume an existing operation. The latter may also be accomplished by a direct sale and transfer of an existing permit authorization under the conditions set forth in Chapter 11, paragraph F.

If new concession services are being initiated, they should have properly been identified as necessary and appropriate through the planning process. An economic feasibility study is required. The extent of the study will depend upon the complexity of the proposed operation. (See Chapter 3, paragraph E.)

A detailed prospectus is generally not prepared in connection with permits. However, it should be in sufficient detail to provide a prospective concessioner with adequate information regarding the facilities and services to be provided and the expectations of the Service as to the quantity and quality of the operations.

Brevity can be accomplished by extracting applicable sections of the prospectus format provided in Exhibit 1 of this Chapter. The words, sentences and paragraphs that are bracketed are to be used or deleted as applicable.

2. Preparation Of Proposed Permit

Concurrent with the preparation of the prospectus, the proposed permit is drafted using the standard permit form found in Exhibit 4 of Chapter 6. The permit is to be drafted to coincide with the prospectus requirements.

3. Preparation Of Supplemental Permit Documents

Same as that described in Chapter 6.

4. Procedures For Finalizing The Prospectus

Same as that described for contract, new authorizations.

The prospectus and proposed permit should be reviewed by the Regional Solicitor for legal sufficiency prior to issuance of the press release.

5. Press Release And Distribution Of Prospectus

The Region or Park will issue a press release advising that a concession opportunity is available. The prospectus will allow a minimum of 60 days for proposals to be submitted unless written determination is made that a

shorter period is necessary because of exceptional circumstances. All prospectuses must explain why the NPS considers any predetermined response period to be sufficient time for applicants to submit offers.

The prospectus is to be provided to anyone requesting a copy. The Region or Park may also elect to mail the prospectus to those applicable on the mailing list simultaneously with the issuance of the press release.

PROSPECTUS

UNDER WHICH A CONCESSION

(CONTRACT) (PERMIT)

WILL BE NEGOTIATED FOR THE (CONTINUED)

OPERATION OF (TYPE OF SERVICES OFFERED)

FACILITIES AND SERVICES WITHIN

NATIONAL _____

DATE ISSUED: _____

DATE OFFERS DUE: _____

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

PROSPECTUS

TABLE OF CONTENTS

1. Prospectus
2. Enclosure No. 1 - Current Rate Schedule
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6. Enclosure No. 5 - General Information Statement
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10. Enclosure No. 9 - Proposed Maintenance Agreement

INSTRUCTIONS

ALL SECTIONS DENOTED BY

[]

ARE OPTIONAL

NOTE: INFORMATION TYPED IN BOLDFACE IS STANDARD AND SHOULD
BE USED IN ALL CASES.

PLEASE USE DEPENDING ON

CIRCUMSTANCES INVOLVED.

NOTE: If NPS determines franchise fee before
Prospectus is issued, fill in
appropriate blanks and retype letter.

INTRODUCTION

The National Park Service of the Department of the Interior is seeking a qualified concessioner to [establish] [provide] [acquire], operate and maintain, accommodations, facilities and services as more particularly described herein for the general public at _____ (Area) in _____ (State) _____. In order that interested parties may submit a proposal pursuant to the notice published in the _____ (Newspaper) (Federal Register) _____ of _____ (Date) _____, the following information is given regarding the proposed concession operation at _____ (Name of Area) _____. This invitation is issued to evoke the widest possible interest in [establishing] [acquiring] [providing], [operating and maintaining] the concession, and to inform all interested parties of the requirements and conditions under which the operation(s) may be conducted.

[Concessioners who have provided satisfactory service during the lifetime of their concession [contracts] [permits] enjoy, pursuant to the Act of October 9, 1965, a preference in the renewal of their [contracts] [permits] upon the expiration of [contracts] [permits] covering their operations.]

NOTE TO PREPARER: Explanation as to why the NPS considers any pre-determined response period to be sufficient time for applicants to submit offers should be provided here.

[A pre-proposal conference will be held on _____ (Date) _____, at _____ (Time) _____ in _____ (Place) _____. Applicants who wish to attend this conference or who have any questions regarding this Prospectus should contact _____ (Name) _____ on _____ (Phone No.) _____.]

GENERAL AREA DESCRIPTION

This section is to be prepared by the park and should include a detailed narrative on location, climate, season, visitation, access, etc.

[EXISTING CONCESSION]

[The present concession consists of:

This section is to be prepared by the park if there are existing concession facilities and services. Information concerning the existing facilities and services should be provided in sufficient detail to describe the type, function and scope of operations. This section should also include the designation of Government-owned facilities or services to be used by the concessioner, and any salient facts concerning the existing concession operations.]

REQUIREMENTS

The concessioner shall be [required] [authorized]* to provide the services and facilities set forth in SEC. _____ of the attached [contract 1] [permit] under the following conditions.

Requirements to be prepared by the park.

This section can include:

1. Special operating requirements (dates opening and closing times, etc.)
2. Special maintenance requirements,
3. Statement on utilities if unusual circumstances exist,
4. Special franchise fee requirements

* Use the word "authorized" with permits only.

1/ The number of Section of Contract entitled "Accommodations, Facilities, and Services" should be put in blank.

5. Any NPS plans in existence or under-way which may have an effect on the concession operations.

in addition to the following paragraphs.)

[CONSTRUCTION AND IMPROVEMENT PROGRAM]

[The proposed contract requires the concessioner to undertake a [construction and improvement] [repair and upgrading] [renovation] program costing not less than \$_____. This program shall include the following, and must be completed by the date(s) indicated:]

TERM OF [CONTRACT] [PERMIT]

The term of concession contracts under existing policies is to be commensurate with the size of the investment. [The [substantial] investment required for this concession warrants a term of approximately _____ years.] [Since the new [contract] [permit] will require [only a limited] [no] investment, a term of more than _____ years does not appear to be warranted.]

[Contracts negotiated for a term of five (5) years or more or where the annual gross receipts exceed \$100,000 are required by law to be submitted to the Congress for sixty (60) days before they may be awarded.]

[Permits negotiated for a term of five (5) years or where the annual gross receipts exceed \$100,000 are required by law to be submitted to the Congress for sixty (60) days before they may be awarded.]

OPERATING AGREEMENT AND MAINTENANCE AGREEMENT

An operating agreement and maintenance agreement will be concurred in during [contract] [permit] negotiations and renewed on no less than an annual basis with the appropriate changes as developed by the Superintendent and the concessioner. The proposed operating and maintenance agreements are attached as enclosures _____ and _____.

RATES FOR SERVICES

Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowances for length of season, provision for peak loads, average percentage of occupancy, accessibility and cost of labor and material, type of patronage and other conditions customarily considered in determining charges, but due regard may also be given to such other factors deemed significant.

*[The current approved rates are attached hereto as Enclosure No. _____. All offerors must agree in their proposals to operate at such rates unless a new rate schedule is approved by the Secretary during the [contract] [permit]. Such approval, except in unusual circumstances, will not be considered by the Secretary until after the first year of the [contract] [permit] has expired. Any alternative rate schedules submitted by offerors will not be considered in the evaluation of proposals received due to the fact that such rates are necessarily subject to change during the term of the [contract] [permit] when approved by the Secretary. (For further information on Rates, see the section referring to Rates in the enclosed proposed concession [contract] [permit].

[A detailed listing of proposed rates and, if appropriate, mark-up percentages must be submitted as part of the offer.]

AGREEMENT ON REDUCED RATES TO GOVERNMENT EMPLOYEES ON OFFICIAL BUSINESS

Concessioners are to provide reduced rates to Government employees only while the employees are conducting official business, in order to benefit the Government by lowering travel expenses, permitting more effective program control, and maximizing use of Federal funds. Reduced rates for lodging and essential transportation may be provided directly to Federal employees (not family members). Reduced rates are not applicable under any circumstances for food or merchandise, including groceries, gasoline or other automobile needs. All reduced rates must be made part of the concessioner's approved rate schedule. (See section _____ of the attached concession contract.)

UTILITIES

Rates for utility services furnished to concessioners by the National Park Service shall be based on operating costs (not including existing capital investments) or comparability, whichever is greater. Concessioners may be permitted to pass through to park visitors those costs which exceed comparability.

* Use only when there is an existing concessioner with established rates.

FRANCHISE FEE

The National Park Service has determined that in view of the privileges to be granted by the new (contract) (permit) and in view of the statutory provisions of P.L. 89-249, the new (contract) (permit) will require the Concessioner to pay a franchise fee rate of _____ percent (_____%) of the annual gross receipts. If an offeror proposes to pay a higher percentage fee rate, the detailed financial projections for a three (3) year period, as required in the Statement of Qualifications of Applicant, Part IV, A, must substantiate the feasibility of the higher fee rate. Such higher fee rate, if supportable, will be given secondary consideration in the evaluation of all offers. [In order to promote the sale of genuine United States native and Indian handcraft the new (contract) (permit) will specifically exclude from the franchise fee the gross receipts from such handcraft sales.]**

[In addition the new (contract)(permit) will require the payment of a fee based on the current fair value (in the amount of _____ annually) for the use of (any) (the) Government-constructed or acquired buildings or improvements assigned to the concessioner.]

[In addition, the new (contract)(permit) will require the payment of a fee for the use of the Government-constructed or acquired buildings and improvements assigned to the Concessioner. This fee will be adjusted from the present fee of _____ to reflect the current fair value as assigned through the appraisal process and will be provided as a revised Exhibit ____ in the final proposed (contract)(permit).]

INSURANCE

The proposed (contract)(permit) requires the Concessioner to purchase and maintain fire and extended coverage insurance for full replacement value of those buildings, structures, equipment, furnishings and betterments and merchandise used in the operation. Exhibit _____ of the attached concession (contract) (permit) lists the buildings and structures and their full replacement values.

If more than one building is involved, a blanket policy may be proposed. If the applicant considers full replacement value insurance not economically feasible, he/she may propose a lesser insurance coverage such as a deductible, self-assumption, actual cash value or, in extreme cases, no insurance. Proposals for lesser coverages must be fully justified by providing rate quotations from an insurance broker together with a financial projection which demonstrates impact on the concessioner. Applicants who intend to make a proposal for lesser coverage are advised to obtain a complete copy of the NPS Insurance Program before doing so.

**To be used only when the concessioner is authorized to sell such items.

*[The concessioner is to purchase and maintain a Builders Risk Form Policy at the time construction commences.]

The concessioner is also required to purchase and maintain comprehensive general liability insurance coverage, in the minimum amount of \$100,000 for bodily injury per person, \$_____ (\$100,000 x the potential risk) per occurrence and \$25,000 for property damage. The following additional liability coverages are required:

Applicants should review Section ____ of the attached concession [contract] [permit] and include his insurance proposal as Part _____.

Any applicant who wishes to obtain the National Park Service's complete Insurance Program Requirements should contact: _____.

[POSSESSORY INTEREST]**

Possessory interest is the concessioner's partial ownership (compensable interest) in Government acquired or constructed facilities and ownership of concessioner acquired or constructed facilities. Under the proposed contract contemplated hereunder the concessioner shall have a possessory interest in improvements it makes to Government improvements to the extent of book value pursuant to Section 4 of the proposed contract. Any improvements, including routine maintenance and repairs, will be made by the concessioner if such improvements are economically feasible. If not, they may be constructed by the National Park Service subject to the availability of appropriated funds. Such improvements made by the concessioner may be expensed or amortized.

Section 6 of the Act of October 9, 1965, P.L. 89-249, states that concessioners who acquire or construct, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service, shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title which shall be vested in the United States. The provision states further that possessory interest may not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. Just compensation is defined as reproduction cost less depreciation, not to exceed fair market value, "unless otherwise provided by agreement of the parties."

* To be used for contracts only where there is a building program.

**Use only when developing a Prospectus for contracts.

For the purposes of the concession contract contemplated hereunder just compensation is described in Section 12 of the enclosed proposed concession contract (Enclosure No. ____).

[ACQUISITION OF CONCESSION FACILITIES]

[The facilities used in this operation are equipped and stocked for immediate operation. The equipment, personal property and inventories belong to the present concessioner. Any new concessioner will be required to provide such equipment, personal property and inventories as may be necessary for the proper and efficient operation of these facilities.]

[The proposed successor must (may)* arrange with the present concessioner for the purchase of any possessory interest, and other assets, including merchandise and inventories of the concessioner used or held for use in connection with the operations. Negotiations may be conducted directly with the incumbent concessioner whose address is: _____.

[In the event interested parties do not agree on a price, procedures for arriving at a fair purchase price of facilities are provided in the following quoted section of the present contract:]

(IF THERE IS AN EXISTING CONCESSIONER, QUOTE SECTION OF
EXISTING CONTRACT ENTITLED COMPENSATION FOR CONCESSIONER'S
POSSESSORY INTEREST)

[Failure of the successful applicant to reach agreement upon the final terms of the purchase arrangement within a reasonable time after notification of selection by the National Park Service may constitute grounds for termination of such selection, and the National Park Service in its discretion may accept the offer of another applicant or solicit new applicants as it deems appropriate.]

[The National Park Service reserves the right to approve or disapprove both the qualifications of the prospective applicant and any purchase or financing arrangements.]

The foregoing requirements represent the present objectives of the National Park Service in the area, but it is recognized that the specific details may be subject to amendment by mutual agreement between the Service and the concessioner.

SUBMISSION OF PROPOSALS

The format to be used for the applicant's transmittal letter is attached, and any additional comments of the applicant may be included therein. The Statement of Qualifications of Applicant must be used in applying for the concession opportunity, and must be completed in accordance with the instructions contained therein. The applicant's proposal, i.e., the transmittal letter and the Statement of Qualifications of Applicant should be submitted in such detail so as to facilitate a comprehensive analysis. Proposals should be submitted to the [Superintendent] [Regional Director] (Address)

on or before _____ (Due Date). Proposals submitted or postmarked after the evaluation panel convenes will not be considered during the evaluation of offers, and will be returned (unopened) to the sender. However, if it is determined to be in the best interest of the Government, the Service reserves the right to evaluate late proposals in the event that other proposals received are not satisfactory. Offers and modifications thereof shall be enclosed in sealed envelopes marked "BID PROPOSAL". In addition, the offeror shall show on the envelope the date specified in the public notice or newspaper release for receipt by the National Park Service, and the name and address of the offeror.

[Prospective applicants may consult with the existing concessioner concerning financial matters. Prior arrangements with the concessioner should be made in this regard.]

Attached hereto as Enclosure No. _____ is the proposed concession [contract] [permit] which sets forth the terms and conditions under which the concession operation is to be conducted. APPLICANTS SHOULD CAREFULLY CONSIDER THIS DOCUMENT AND THOROUGHLY READ ALL OF THE INFORMATIONAL DOCUMENTS, ENCLOSURES 2, 3, 4 and 5, BEFORE COMPLETING THE STATEMENT OF QUALIFICATIONS OF APPLICANT.

The applicant selected by the National Park Service must agree to complete the negotiation and execution of a [contract] [permit] containing substantially the terms and conditions included in the proposed [contract] [permit] attached within sixty (60) days after it is presented to the applicant.

EVALUATION OF PROPOSALS

Managerial competence, conformance to the terms of the Prospectus in relation to quality of service to the visitor, as well as financial ability will be prime factors in evaluating proposals. In the event two or more applicants show adequate experience and financing, other factors will be considered.

NOTE TO PREPARER: The evaluation criteria to be used should be listed in this space.

If an applicant fails to complete any part of the Statement of Qualifications of Applicant the proposal will be considered by the National Park Service as being non-responsive.

All proposals submitted in response to this Prospectus may be disclosed by the Department of the Interior to any person upon request pursuant to the Freedom of Information Act. If the offeror believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the page of the proposal on which it appears and shall mark each page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal.

Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a [contract] [permit] is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the [contract] [permit], and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

The National Park Service reserves the right to disregard any proposals submitted or to make any counter proposals which it may consider reasonable or desirable.

SUBMISSION AND EVALUATION OF OFFERS IN RESPONSE
TO A FACT SHEET OR PROSPECTUS

A. GENERAL

Both Prospectuses and Fact Sheets must (a) reflect the present needs and specifications of the Service in regards to the management and operation of the proposed concession operation; (b) acquaint the prospective applicant with the Concessions Program in general; (c) ensure responsive and qualified offers by outlining the evaluation process and weighing and specifying the evaluation criteria; and (d) mention in each (Fact Sheet and Prospectus) that the National Park Service reserves the right, at any time prior to final execution of a contractual document, to reject any and/or all proposals received, to resolicit or cancel the solicitation altogether or make any counter proposals it considers appropriate, if in the judgment of the executing official, the best interest of the public would be best served. The determination of the best offer submitted will be as judged by the National Park Service.

Great care should be taken in preparing the Fact Sheet or Prospectus to ensure that it is written in a clear and concise manner. The primary and secondary factors used in the evaluation process must be developed prior to the issuance of the Fact Sheet or Prospectus and should be stated therein.

The evaluation of proposals must be fair, thorough, and well documented. Proposals in response to Prospectuses or Fact Sheets should be submitted on the attached Statement of Qualifications of Applicant (Exhibit 1 to this Chapter), and should be evaluated, if possible, within ten (10) days after the due date stipulated in the Fact Sheet or Prospectus.

B. PROSPECTUS

All proposals submitted on or before the due date established in the prospectus will be evaluated in accordance with the criteria established in the prospectus. Generally, the criteria will be (1) financial capability to carry out the activities proposed, (2) managerial competence and experience, and (3) conformance with and responsiveness to the requirements and conditions set forth in the prospectus.

C. FACT SHEET

All proposals submitted on or before the due date established in the fact sheet will be evaluated and considered in accordance with the criteria established in the fact sheet. Generally, the Fact Sheet will establish criteria in

a manner similar to a prospectus, plus a statement regarding an incumbent concessioner's statutory right of preference, e.g., the incumbent concessioner is granted a statutory right which, in essence, grants the incumbent the opportunity to meet any terms and/or conditions of any proposal which the Secretary may consider to be better than the proposal submitted by the incumbent concessioner. If the incumbent concessioner amends its proposal to reflect substantially equal terms and conditions to the proposal considered by the Secretary to be better, the new or renewed concession authorization will be negotiated with the incumbent concessioner.

In both instances (Prospectus or Fact Sheet) offers submitted after the evaluation panel convenes will not be considered during the evaluation of offers and will be returned (unopened) to the sender. However, if it is determined to be in the best interest of the Government, the Service reserves the right to evaluate late proposals in the event that other proposals received are not satisfactory.

D. SELECTION AND RESPONSIBILITIES OF THE CHAIRMAN AND MEMBERS OF THE EVALUATION PANEL

In situations where several disciplines are involved or when a number of offers are received in response to a prospectus or fact sheet, the expertise of an individual evaluator may not be sufficient, and a decision by the person executing the authorization or his/her designee may be to establish a panel. In this instance, a panel should be established consisting of representatives selected because of their particular knowledge and willingness to serve on the panel. Where several disciplines (i.e., interpretation, safety, etc.) are involved, people from these areas should be asked to participate on the panel. Panel members should be required to sign a non-conflict of interest statement.

The panel chairman should be selected because of his/her knowledge of the concessions contracting function and perform the following tasks:

1. Select the panel members;
2. Determine what minimum requirements a proposal should contain and still be considered responsive;
3. Determine how omissions in applications or need for clarification will be handled;
4. Assign verification responsibilities to the panel members;
5. Transmit the Evaluation document and recommendations to the executing official;

6. Prepare notification letters to applicants regarding the evaluation results; and

7. Handle any appeals received concerning the evaluation process and/or selection.

However, in some situations it is neither convenient nor efficient to establish a formal panel. Rather, individuals may be called upon to assess a portion of the proposal within their field of expertise. In other situations, an individual may be qualified to handle the entire process. Generally, these situations would be applicable when only one or two offers are submitted.

E. EVALUATION METHODS AND VERIFICATION

As individual prospectuses and facts sheets reflect differing needs, so too should individual evaluations reflect the specifics of the fact sheet or prospectus. If the requirements are specific, then the evaluation should be based on those specific requirements. If innovative solutions are sought, the evaluation should be able to assess the compatibility of the proposals with park purposes, planning documents, etc., weigh various factors and select alternatives offered.

Evaluation of offers is subjective and a number of alternative methods of evaluating are possible; however, in most instances two basic approaches or a combination thereof will suffice.

1. Comparative Analysis

A comparative analysis envisions extracting various elements from a prospectus or fact sheet and assigning numerical weights to each factor, listing the applicant's response to each of the elements and then rating each element based upon the assigned numerical weight up to the maximum score.

Prior to the opening of the offers, panel members should discuss among themselves the characteristics of each of the components of the rating system in order to share experience and knowledge. A better understanding of what is meant by each component will aid in the evaluation and provide more consistent results. After reviewing the offers, each panel member determines a score based on the assigned weights for each component up to the assigned maximum score. Adding the component scores produces a total score for each offer by each panel member. A single relative score for each offer should be calculated by averaging each evaluator's score. This results in a range of scores from high to low. Offers with close scores (a few points or so difference) should generally be considered equal for the purposes of the recommendation.

The panel should then discuss which offers are considered qualified with special attention to the quality of the offers and to the difference in the scores. The result should be a dividing line between those offerors the panel would recommend to operate and those they would not. Within the qualified group, the panel would ordinarily recommend the highest score unless certain circumstances exist, which would alter such selection. The remaining qualified offers then would be held in standby should a problem develop in the negotiations with the offeror submitting the best proposal. Such problems could be a withdrawal of the offer by the offeror, a problem with the offeror's statements or contentions as the verifications are made, or a clarification of some point.

2. Individual Analysis

This approach calls for an analysis of each individual proposal including an evaluation of how each element of the proposal fits and balances with each of the other pieces. This approach can be used effectively in situations where there are very few responses. The final selection is based on the total analysis and judgment of the benefits to the public and impact on the park.

In both instances, a written evaluation report from the panel or evaluator to the executing official should be prepared which summarizes the selection process and provides the medium for the official recommendations. The strengths and weakness of each offeror should be summarized and the qualified offers identified along with the recommended offer. The narrative should contain the support for these decisions and the criteria used by the panel. Any qualifications or conditions placed on the recommendations should be clearly discussed so as to properly inform the selecting official.

If the evaluation has been made for a contract renewal (fact sheet) and the concessioner has a preferential right for renewal, the preceding process must still be followed. If the incumbent concessioner does not have the better proposal, the evaluation report must clearly identify what is necessary for the incumbent to match the better offer in order to claim his right of preference.

When the scores are close enough so that the panel cannot select a single recommended offer as the better offer and the incumbent is one of those offers, then award should go to the incumbent concessioner because of his right of preference in renewal.

The primary factors which must be considered in the selection of the best proposal are:

1. Experience and related background of offeror;

2. Offeror's financial capability; and

3. Conformance to the terms and conditions of the prospectus or fact sheet in relation to quality of service to the visitor.

Secondary factors are considered when the best offers are rated essentially equal by the panel members with respect to the primary factors and the incumbent is not in that group. The secondary factors are used to "break the tie". By regulation, the offer of a franchise fee is a secondary factor. Another secondary factor is if the offeror changes the operating specifications in Part III.A. of the Statement Of Qualifications of Applicant. Other secondary factors may be developed for the operation if the aspects are not considered essential and the Service has not declared a position on the matter.

Rates submitted with a proposal should not be considered during the evaluation process unless specifically stated otherwise in the Prospectus or Fact Sheet because rates are based on comparability.

The panel chairman is responsible for verification of the information received. The financial information and information on experience and related background should be verified. Verification procedures and results should be included in the evaluation document.

F. CLARIFICATION OF PROPOSAL DETAILS

No attempt should be made to obtain additional information or clarification of details until all proposals have been evaluated. Missing or incomplete information may, depending on the nature of the omission, render the proposal nonresponsive. If one offeror is given the opportunity to submit additional information, all others should also be allowed to do so. All requests from offerors for additional information must be made in writing. All offerors must be provided with the same information. If one offeror is given an answer to a question all offerors must be given that information.

Modifications of proposals should not be permitted after the due date for submission of the proposal. A proposal should be considered nonresponsive if an applicant cites the Privacy Act as the reason for not completing any part of the Statement of Qualifications of Applicant. The applicant should be notified accordingly.

G. NOTIFICATION OF SELECTION

Upon verification of the data submitted by the qualified offerors, a written recommendation should be submitted to the official who is to execute the Concession authorization advising him of the panel's recommendation. The recom-

mentation must be included in the evaluation document. The requirement for an evaluation document cannot be waived. Accompanying the evaluation document should be letters to each of the applicants notifying them of the selection.

H. CONFIDENTIALITY OF PROPOSALS AND IMPLICATIONS OF THE FREEDOM OF INFORMATION ACT (FOIA)

All information in an applicant's offer must be treated confidentially and cannot be released until the contract is awarded, unless the applicant gives NPS written permission to do so. If such information is requested after the contract is awarded, the NPS response should be handled in accordance with the provisions of the FOIA. The panel chairman is responsible for assisting the Regional FOIA officer in responding to such requests.

I. CONTRACT/PERMIT NEGOTIATIONS

Contract/Permit negotiations with the successful applicant shall be initiated as soon as possible after the selection is made. In fact, the proposed contract/permit may be sent to the successful applicant with the notification of selection.

Material changes (i.e. length of term of contract, building & improvement program, investment, franchise fee reduction) to the proposed authorization, as were originally required in the fact sheet or prospectus, may not be made unless the fact sheet or prospectus is readvertised and there is a resolicitation of offers.

Should negotiations fail with the applicant who was selected on the basis of the revised prospectus/fact sheet the NPS may negotiate with the second most qualified applicant or the NPS may again readvertise the opportunity as it is or may change the terms and conditions of the solicitation.

J. PROSPECTUS WHERE EXISTING CONCESSIONER REQUESTS NPS TO SEEK A BUYER

In some situations the present operator may want to discontinue operating or sell his interest to another party but cannot find an interested operator. If the concessioner asks the NPS to locate an interested party to take over the operation, the NPS could assist by issuing a prospectus for the operation. However, the present operator would have to put in writing the fact that he/she is relinquishing his/her preference in renewal, that he/she will negotiate with the offeror that NPS selects and, if necessary, will submit to arbitration for the purchase price of his/her possessory interest as spelled out in the arbitration process. In this situation, the NPS must take the lead and supply all financial information and operating information to all offerors instead of relying on the present concessioner to provide this information to interested parties. The

concessioner would have to agree to allow NPS to release certain financial information that would not injure the sales negotiation but would be beneficial to all offerors in submitting proposals. The concessioner would be required to give the same information to all interested parties or not give out the information at all. In other words, the solicitation should be treated fully as a prospectus and in no way looked upon as a fact sheet. The exception will be that the sales price will be negotiated between the best offeror and the present concessioner (or arbitration) and some financial information may not be released during the solicitation. All offerors should receive the same information from the NPS and should not be put in the position of having to obtain it from the present concessioner.

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Page 1

STATMENT OF QUALIFICATIONS OF APPLICANT

APPLICANT'S FORMAT LETTER FOR SUBMITTING PROPOSALProposal for Concession Operation

NATIONAL PARK SYSTEM AREA(S):

To: Regional Director, _____ Region

Sir:

(I) (We) hereby offer to provide the accommodations, facilities and services at _____ in accordance with the terms and conditions as specified in your [FACT SHEET] [PROSPECTUS] dated _____. (I) (We) are enclosing the required "STATEMENT OF QUALIFICATIONS OF APPLICANT" which, by this reference, is made a part hereof. (I) (We) certify that the information furnished herewith is true to the best of (my) (our) knowledge and belief. In addition, (I) (We) agree to complete the negotiation and execution of a Concession Contract within a reasonable time after it is presented by the National Park Service.

BY _____

TITLE _____

ADDRESS _____

DATE _____

(Note: If applicant's proposal differs from the [PROSPECTUS] [FACT SHEET] criteria, then the transmittal letter should address all differences and be modified accordingly.)

STATEMENT OF QUALIFICATIONS OF APPLICANT

DATA TO ACCOMPANY PROPOSAL

The offeror's proposal, including the transmittal letter, should be submitted in sufficient detail so as to facilitate a comprehensive analysis. ALL DATA (SUMMARIZED BELOW) MUST BE SUBMITTED ON THE ATTACHED FORMS (UNLESS ATTACHMENTS ARE SPECIFICALLY REQUESTED), OR THE PROPOSAL WILL NOT BE ACCEPTED BY THE NATIONAL PARK SERVICE. ADDITIONAL SHEETS WITH IDENTICAL FORMAT WILL BE ACCEPTED. ALL BLANKS MUST BE COMPLETED OR MARKED "NOT APPLICABLE", OR THE PROPOSAL WILL NOT RECEIVE FULL CONSIDERATION DURING THE EVALUATION PROCESS. The offeror may include additional data considered to be pertinent to the evaluation of the proposal.

1. Identifying information - Part I
2. Experience and Related Background of offeror - Part II
3. Conformance to the terms and conditions of the [Prospectus] [Fact Sheet] in relation to quality of service to the visitor. (Plans for operation) - Part III
4. Financial Capability - Part IV

CERTIFICATE OF CORPORATE OFFEROR

I, _____, certify that I am the
_____ of the corporation named as offeror
herein; that _____, who signed this proposal on behalf
of the offeror, was then _____ of said
corporation; that said proposal was duly signed for and in behalf of the
corporation by authority of its governing body within the scope of its cor-
porate powers.

TITLE

PART IIDENTIFYING INFORMATION

A. Name of Offeror: _____

Present Address: _____

Present Telephone _____

Present Form of Business
Organization (Offeror):☐

Corporation

(Please check "Other" if
no organization presently
exists. (Explain)☐

Partnership

☐

Individual (Sole Proprietor)

☐Other: (Specify) _____

_____Proposed Form of Business
Organization to Operate
This Concession:
(Please check one)☐

Proposed Corporation (New)

☐

Proposed Partnership (New)

☐Individual (Sole Proprietorship)
(New)☐

Same Entity as Above

For the purposes of this Statement of Qualifications, "offeror" shall refer to the present organization. The "proposed entity" shall refer to the organization which the offeror intends to establish for the purpose of operating this concession.

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EXHIBIT 1

Chapter 8

Page 6

Part I (Cont.)

Page 2

Please note that the National Park Service requires concessioners to submit an Annual Financial Report which includes only the results from concession operations.

B. Offeror's Organization

(If no organization presently exists, so state, and go on to Section "C".)

For the Offeror:

List the names and addresses of the principal owner(s). Also indicate for each owner, the percentage of ownership and capital investment. If a coporation, please substitute the number and type of shares of stock for the percentage of ownership.

[illegible]

PART I (Cont.)

Page 3

-List the names, addresses, and titles of corporate officers:

<u>Name</u>	<u>Address</u>	<u>Title</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

-State of Incorporation: _____C. Proposed Organization:

(If the proposed and existing entities are the same and no additional investment is necessary, so state and leave this page blank. However, if owners, officers, or investment is to change, this page must be filled out in full.)

-List the names and addresses of the proposed principal owners. Also, indicate for each owner the proposed percentage of ownership and capital investment. If a corporation is proposed, substitute the number and type of shares of stock for the percentage of ownership.

<u>Name and Address</u>	<u>Percentage of Ownership</u>	<u>Total Capital Investment *</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTALS:	_____	_____

*Total should equal equity capital in Part IV.

Part I (Cont.)

Page 4

Proposed corporations must provide the following information:

-List the names, addresses, and titles of corporate officers:

<u>NAME</u>	<u>ADDRESS</u>	<u>TITLE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

-State of Incorporation: _____

The following attachments must be provided if the organization is to be:

A Corporation:

Articles of Incorporation and By-laws

A Partnership:

Partnership Agreement

If the above materials are not yet available, state when they will be available and give a brief summary of the anticipated important provisions:

Part I (Cont.)

Page 5

In addition to the above, the latest financial statement available should be submitted for offerors who are existing corporations or partnerships. Sole proprietors will produce theirs in their Personal Financial Statement. (See Exhibit A.)

Subsidiaries must also submit the latest financial statement for their parent company.

PART II

EXPERIENCE AND RELATED BACKGROUND OF OFFEROR

A. BACKGROUND OF OFFEROR

1. Use the space below to relate the business experience of the offeror. Emphasis should be placed on similar types of operations, product lines, or retail activity. Be specific with respect to size of operation, dates, and area of operation. Use additional sheets if necessary.

Sole proprietors should complete this portion and the portion relating to the owner's background. (PART II-B)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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EXHIBIT 1
Chapter 8
Page 11

PART II (Cont.)
Page 2

2. If previous experience is not in connection with the operation of a similar type of business, state why you believe your organization is competent to operate such a service.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

3. Do you have other operations or interest in other operations in areas adjacent to this National Park Area?

() YES () NO

PART II (Cont.)
Page 3

4. BUSINESS REFERENCES (Name & Addresses & Phone Numbers):

Full Name _____	Full Name _____
Present Business _____	Present Business _____
or Home Address _____	or Home Address _____

Business or Occupation _____	Business or Occupation _____
---------------------------------	---------------------------------

Phone: _____	Phone: _____
--------------	--------------

Full Name _____	Full Name _____
Present Business _____	Present Business _____
or Home Address _____	or Home Address _____

Business or Occupation _____	Business or Occupation _____
---------------------------------	---------------------------------

Phone _____	Phone _____
-------------	-------------

B. BACKGROUND OF OWNERS/OFFICERS

Exhibit A (Parts I and II) of this document should be completed and attached to this submittal for all current and proposed principal owners and operating officers. Special emphasis in Exhibit A (Part I) should be placed on duties and responsibilities undertaken. Photocopy extra sheets as needed.

C. BACKGROUND OF PROPOSED ON-SITE MANAGER(S)

Exhibit A (Part I) of this document should be completed and attached to this submittal for the proposed on-site manager(s) if different from the owners or officers attached above.

NAME: _____

PART II (Cont.)

Page 4

If proposed manager(s) are not known at this time, indicate below the skills and experience which you consider critical for a job of this nature.

PART IIIOPERATIONALA. OPERATING SPECIFICATIONS

Please indicate below whether you agree to provide the required services for the hours and conditions specified in the [Prospectus] [Fact Sheet]:

☐ YES☐ NO

Please use the space below to propose any additions, deletions, or changes you wish to make concerning the specifications presented. These comments shall not be considered in the evaluation process. However, if your offer is considered to be essentially equal to another offer, then these comments may be reviewed as a secondary factor in order to establish the better proposal. Notwithstanding the evaluation, such changes could only become approved with the written permission of the Superintendent after the selection is complete.

B. ORGANIZATION STRUCTURE (The Proposed Entity)

1. Provide an organizational chart showing the principal lines of authority between departments and managers. Indicate the number of employees in each department and provide summary position descriptions describing the basic functions of the position, the major duties, and scope of authority.

PART III (Cont.)
Page 2

2. Provide proposed wage schedules, shift schedules, and estimated hours per week for each position. This section should provide an understanding of the level of effort that will be provided.

3. Provide a plan for coping with seasonal fluctuations in visitation that normally occur for this (these) area(s). Please concentrate on employee levels.

C. SUPERVISORY

Provide the name of officers and owners who are to take an active role in the operation of this concession and the number of hours/ week they plan to spend.

PART III (Cont.)
Page 3

<u>Name</u>	<u>Position</u>	<u>Hours/Week</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the on-site manager(s) is (are) less than full-time, indicate the number of hours per week they will be on-site.

☐ FULL TIME OR _____
Hours/Weeks

D. Training:

1. Outline the training program that you propose.

2. Will you participate in cross-training and orientation between your company and the Government?

☐ YES ☐ No

PART III (Cont.)
Page 4E. Insurance

What amounts of insurance coverage will you provide for:

	<u>Coverage Limits</u>	<u>Approximate Cost</u>
<u>Property Damage:</u>		
Fire and Extended Coverage	_____	_____
Other Property Damage (List)	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Liability:

Bodily Injury, per person	_____	_____
Bodily Injury, per accident	_____	_____
Property Damage	_____	_____
Excess (Umbrella) liability	_____	_____
Other Liability Coverages:		
_____	_____	_____
_____	_____	_____
_____	_____	_____

F. Safety and Sanitation:

Attach a detailed outline of safety and sanitation programs and inspections, including any plans for training in these areas, both formal and on-the-job.

PART III (Cont.)
Page 5

G. Maintenance Details:

All offerors must attach a detailed outline of a maintenance program to be developed to provide proper maintenance of all equipment, furnishings, fixtures, buildings, and grounds of both concessioner and Government.

H. Philosophy on Operating Within National Park Service Area:

Please provide us with your philosophy on operating within a National Park Service area for the purpose of providing service to the visiting public.

[illegible]

PART III (Cont.)
Page 6

I. BUILDING AND IMPROVEMENT PROGRAM

If the proposed contract requires a Building and Improvement Program, please provide details on how you plan to implement the program.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slightly textured appearance and is set against a dark background.

J. EQUIPMENT

Attach a list of equipment that you believe is needed for the operation. Indicate the approximate cost and provide details on how you plan to provide the equipment. (NOTE: A new concessioner may be required to purchase some or all of the existing concessioner's equipment. See [Prospectus] [Fact Sheet].

Offeror's Name _____

PART IV - FINANCIAL CAPABILITY

A. What is your estimate of the cost of financing the proposed operations(s):

Existing buildings and structures	\$ _____
Construction or rehabilitation costs (initial)	\$ _____
Equipment	\$ _____
Inventory	\$ _____
Working Capital (Other than inventory)	\$ _____
Other (Specify) _____	\$ _____

Each of the above estimates must be supported in detail on a separate sheet.

B.1. How do you plan to finance the proposed operation(s):

Equity Capital	\$ _____
Debt	\$ _____
 TOTAL	 \$ _____

2. Describe source of equity.

Funds to be raised from owners must appear on their Personal Financial Statements (See Exhibit A) on the "Committed" line. Excess funds available in case of special situations are to be entered on the "Additional Available" line.

Funds from an operating business (i.e. parent company) must be supported by a recent balance sheet and income statement and whatever supporting documents are necessary to ensure that funds are available and will be committed.

Funds raised by the sale of assets must be supported by a description and condition of the assets. Also, the condition of the market for such items should be indicated.

Submission and Evaluation of Offers in Response to a Fact Sheet
or Prospectus

PART IV (Cont.)

Page 2

3. If debt financing is proposed:

a. Name and address of the proposed lending institution:

(NAME)

(ADDRESS)

Is the above a conventional or unconventional lender? _____

b. Amount: \$ _____

c. What commitment do you have? _____

d. Interest Rate: _____

e. Term of loan: _____

f. Payback provisions: _____

g. Attach letter of intent from lender and/or proposed loan agreement.

If unconventional lender (family, etc.), lender must also submit personal financial statements.

4. If operation has seasonal fluctuations, indicate below what is anticipated in the way of short term financing needs and the availability of such funds.

C. Submit the following projections for the first THREE (3) years of operation:

- (1) income statement
- (2) cash flow statement

Include accompanying breakdowns of sales (by category), cost of sales (by category), general, selling, and administrative expense. The assumptions on which the projections are based must be explained.

Offeror's Name: _____

EXHIBIT "A" (PART I)INDIVIDUAL EXPERIENCE AND RELATED BACKGROUND

List employment information for at least 5 years, beginning with present employment.

Name and Address of Employer or Business		Telephone Number		
		_____ (Area Code) _____		
		Nature of Business:		
		_____ Exact Title of Position (indicate if self-employed):		
Dates of Employment		Salary or Earnings		How many people do you employ or supervise:
Starting: per:		Starting: per:		
From: To:		Final: per:		
Description of duties and responsibilities:				
Name and address of Employer or Business		Telephone Number:		
		_____ (Area Code) _____		
		Nature of Business:		
		_____ Exact Title of Position (indicate if self-employed):		
Dates of Employment:		Salary or Earnings		How many people do you employ or supervise:
Starting: per:		Starting: per:		
From: To:		Final: per:		
Description of duties and responsibilities:				

Offeror's Name: _____

EXHIBIT "A" (PART I)INDIVIDUAL EXPERIENCE AND RELATED BACKGROUND

List employment information for at least 5 years, beginning with present employment.

Name and Address of Employer or Business		Telephone Number
		(Area Code) _____
		Nature of Business: _____
		Exact Title of Position (indicate if self-employed): _____
Dates of Employment	Salary or Earnings	How many people do you employ or supervise:
Starting: _____	per: _____	
From: _____ To: _____	Final: _____ per: _____	
Description of duties and responsibilities:		
Name and address of Employer or Business		Telephone Number:
		(Area Code) _____
		Nature of Business: _____
		Exact Title of Position (indicate if self-employed): _____
Dates of Employment:	Salary or Earnings	How many people do you employ or supervise:
Starting: _____	per: _____	
From: _____ To: _____	Final: _____ per: _____	
Description of duties and responsibilities:		

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EXHIBIT 1
Chapter 8
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EXHIBIT A (PART II)

Offeror's Name: _____

PERSONAL FINANCIAL STATEMENT

PERSONAL FINANCIAL STATEMENT OF: _____
As of: _____ (Date)

Line No.	COST \$	MARKET VALUE \$	COMMITTED TO THIS CONCESSION AT MARKET VALUE \$	ADDITIONAL AVAILABLE FOR THIS CONCESSION AT MARKET VALUE \$
1 Cash (Complete Schedule 1)				
2 Marketable Securities (Complete Schedule 2)				
3 Other Investments (Complete Schedule 3)				
4 Notes Receivable (Complete Schedule 4)				
5 Cash Value - Life Insurance (Complete Schedule 5)				
6 Land and Building				
Location Use				

7 Autos				
8 Furniture and Fixtures				
9 Other Assets (Describe)				

10 Total Assets - (ADD LINES 1-9)				
11 Accounts Payable				
12 Accrued Liabilities				
Federal and State Taxes				
Rent				
Interest				

13 Notes Payable (Complete Schedule 6)				
14 Other Liabilities (Describe)				

15 Total Liabilities (ADD LINES 11-14)				
Excess of Assets (Liabilities) over Liabilities (Assets) - Subtract Line 15 from line 10				

EXHIBIT A (Part II)

Page 2

Offeror's Name: _____

SCHEDULE 1 - CASH

NAME AND ADDRESS OF BANK	ACCOUNT NUMBER	AMOUNT
	TOTAL	

SCHEDULE 2 - MARKETABLE SECURITIES

DESCRIPTION	NO. SHARES	COST	MARKET VALUE
TOTAL			

EXHIBIT A (PART II)
Page 3

Applicant's Name _____

SCHEDULE 3 - OTHER INVESTMENTS

Description	Cost	Market Value
TOTAL		

Submission and Evaluation of Offers in Response to a Fact Sheet or Prospectus

EXHIBIT 1
Chapter 8
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Exhibit A (Part II)
Page 4

Offeror's Name: _____

SCHEDULE 4 - NOTES RECEIVABLE

NAME AND ADDRESS OF DEBTOR	RELATION TO DEBTOR	DUE DATE	PAYBACK PROVISIONS	RECEIVABLE

SCHEDULE 5 - CASH VALUE - LIFE INSURANCE

COMPANY	POLICY NO.	BENEFICIARY	FACE AMOUNT	CASH VALUE
		TOTALS		

EXHIBIT A (Part II)
Page 5

Offeror's Name: _____

SCHEDULE 6 - NOTES PAYABLE

NAME & ADDRESS OF CREDITOR	RELATION TO CREDITOR	DUE DATE	PAYBACK PROVISIONS	SECURITY	AMOUNT
TOTALS					

EXECUTION AND DISTRIBUTION OF CONTRACTS AND PERMITS

A. CONTRACTS

1. Execution Of Contracts

After the contract has been typed in final, the original and two carbon originals are forwarded to the successful applicant for signature, comment or negotiation. The concessioner must manually sign the original and two carbon originals of the proposed contract and any exhibits thereto. The identification of the concessioner in the signature block should correspond to the opening paragraph of the contract. If the concessioner is a corporation, the corporation name is to be shown as well as the titles of the executing officials. If a partnership, the trade name, if any, should be shown above the signature of the partners. The name of the individual signing should be typed below the signature in all cases.

In referring to the Standard Contract Language, please note that the execution page for a Corporation contains an "Attestation" line. Concessioners should be advised that this line has to be fully executed before the contract can be considered legal and binding.

As soon as the contract is signed by the concessioner, it is handled in one of the following ways:

a. If the annual gross receipts are or are expected to be \$100,000 or more, or if the term is for 5 years or more, two copies of the contract bearing the concessioner's signature are to be submitted to WASO for transmittal to the Congress for the required 60-day waiting period. The original and carbon signed copies are held at the Region for execution. The transmittal memo forwarding the two copies to WASO should state the following:

(1) Any modifications to the Standard Contract Language after negotiations with the successful applicant and the reasons for these modifications.

(2) That the Regional Solicitor has reviewed and concurred in the contents and procedures.

(3) The date of issuance of the public notice or press release. If a press release was issued, the name of the newspaper(s) in which the notice appeared should also be included in the memorandum.

(4) The number of offers received in response to the public notice or press release.

At the conclusion of the 60-day waiting period, the contract may be executed by the Regional Director on behalf of the United States. The Washington Office will notify Regions on the day the contract may be executed.

b. If the contract is for a term of less than 5 years duration and gross receipts are less than \$100,000, the contract is executed immediately by the Regional Director and distribution made.

A contract number must be assigned by Regions and typed on all copies of the contract. The following numbering system is recommended

CC-0000-1-0001

CC: Meaning Concession Contract and differs from CP for Concession Permit

0000: Refers to the organizational code for the Regional Concessions Office

1: Indicates the current fiscal year

0001: Sequential number, 0001, 0002, etc.

The original and two carbon originals, including any exhibits thereto, must be manually signed by the Regional Director and the date of execution must be filled in on the cover and signature pages.

2. Distribution Of Contracts

Distribution should be made as follows:

- a. The original contract should be retained by the Regional Office.
- b. One signed carbon bearing original signatures is sent to the concessioner;
- c. One signed carbon bearing original signatures is sent to the Washington Concessions Office.
- d. Duplicated copies of the contract are distributed initially as follows:
- (1) Superintendent (1 copy)
 - (2) Regional Finance Office (1 copy)

Additional copies may be reproduced locally.

B. PERMITS

1. Execution Of Permits

The same procedures as described in paragraph A.1 above shall apply for the execution of concession permits except that concession permits for a term less than 5 years in duration or where gross receipts will amount to less than \$100,000 annually, shall be executed by the Superintendent instead of the Regional Director.

Permits for terms of 5 years or more or where annual gross receipts are or are expected to be \$100,000 or more must be signed by the Regional Director after transmittal to the Congress.

2. Distribution Of Permits

Distribution of permits should be in accordance with that indicated on the bottom of the Permit form with three (3) copies being forwarded to the Washington Office.

CONTRACT MODIFICATION DOCUMENTS

A. INTERIM LETTER OF AUTHORIZATION (INTERIM OPERATING AUTHORITY)

There may be infrequent, exceptional situations where it is necessary to authorize new and/or existing concessioners to immediately commence and/or continue operations to adequately serve visitors pursuant to the terms of a new contract but before the contract is executed by the Regional Director. Due to the Congressional 60-day waiting period, and other possible delays, there can be a lapse in time from 60 to 90 days following the time the contract is signed by the concessioner and the time it is approved on behalf of the National Park Service. Interim Letters of Authorization are used to provide for public services as required during this period pending final execution of the contract. Interim Letters of Authorization pursuant to the terms of a new contract cannot be issued until the contract is signed by the concessioner.

Example: A proposed concessioner, XYZ Corporation, will shortly have a proposed contract in its possession for execution requiring a building program and a term of approximately 15 years from the date of execution by the National Park Service. It is the end of February and the proposed contract has not been transmitted to the Hill, but it is imperative that the concession be in operation by May 1. There is not sufficient time to do so before the proposed contract "comes off the Hill" at the end of the 60-day waiting period. In this situation, the Service may enter into a Letter of Interim Authorization with the concessioner pending final execution of the contract by the National Park Service.

It must be borne in mind that the use of Interim Letters of Authorization must be held in reserve for emergency situations only and should not be relied upon as a standard method of operation. Accordingly, a written request for permission to deviate from the normal contracting procedures, including sufficient justification, must be transmitted to WASO for approval by the Director before an Interim Letter of Authorization is issued.

A sample Interim Letter of Authorization is included as Exhibit 1 to this chapter.

B. AMENDMENTS AND EXTENSIONS

1. Amendments To Contracting Authorizations

The Service or the concessioner may initiate an amendment to an existing contract or permit at any time due to circumstances that may come about after the contract or permit is executed. The contract/permit as originally executed is binding upon both the Service and the concessioner. However, this does not apply to any amendments made necessary by law, regulation or policy.

In this event, the Service may amend contracts and permits unilaterally by letter since the concessioner has already agreed by contract or permit that its operations "shall be subject to the laws of Congress governing the area and the rules, regulations and policies promulgated thereunder, whether now in effect or hereafter enacted or promulgated." (Subsection 2(b), current contract language; Subsection 12(a), current permit language.)

Any proposed amendment that would accrue to the benefit of the concessioner or that addresses concerns or problems of the concessioner must be initiated by the concessioner in writing to the Superintendent. In so doing, the concessioner must explain and justify why the amendment is needed. This may be in context of a contract/permit provision that is harmful to the concessioner in providing contractual services and/or not having an opportunity for profit. An amendment may be needed to alleviate circumstances created by the Service, such as a delay in processing construction plans or in providing support facilities for concessioner building and improvement programs. There may be other extenuating circumstances beyond the control of the concessioner which must be reviewed on their own merits.

The Superintendent shall forward the request to the Regional Office along with his/her recommendation and backup information that may be needed to process the amendment in an efficient and timely manner. The Region, after any further studies that may be needed, will arrive at a decision as to whether an amendment is appropriate, if it should be denied or if some modification of the amendment should be negotiated with the concessioner.

Some of the types of amendments requested by the concessioner would include:

- a. Change in financial reporting dates; (Sample amendment attached as Exhibit 2 to this chapter.)
- b. Change in construction dates;
- c. Change in services to be provided; and
- e. Change in franchise fee structure (based on financial difficulties).

The Service may initiate an amendment to a contract or permit at any time that it is deemed to be in the interest of the Service or the public to do so. It may also do so when, through appropriate studies, it is deemed in the interest of the overall financial health and well-being of the concessions operation. The objective of contract amendments should be the same as those followed in establishing concessions in the first place, i.e., services to the park visitor and a reasonable opportunity for profit to the concessioner.

Some of the types of amendments initiated by the Service may include:

- a. Contract extension;
- b. Renegotiation of franchise fee and/or building use fee. (Franchise fees must be considered at least every 5 years of a contract.)
- c. Add or delete government-owned buildings and facilities assigned to the concessioner;
- d. Change in services, facilities and accommodations provided;
- e. Change in building and improvement program;
- f. To include any new legislation, regulations or policies affecting the language for contracts.

A copy of all contract and permit amendments should be sent to WASO for its files.

2. Extensions

The proper procedures for renewal of authorizations is through the Planning Process (Chapters 2, 3 and 4 of this Guideline) and the contract and permit renewal process (Chapter 6). It is, however, necessary at times to initiate the extension of existing contracts or permits to facilitate the completion of planning or other factors which cannot be completed prior to the expiration date of the existing authorization. An extension thereby provides continuity of operations under the terms and conditions of the existing authorization until a new authorization can be effected.

An extension may also be advisable when a sale is imminent or has occurred near the end of a contract term and additional time is needed to evaluate the performance of the new concessioner to establish its right of preference for renewal.

Extensions are normally of limited duration, such as to cover the period of time necessary to complete the planning process, the renewal process and have a new contract in place. Extensions should be held to a minimum period of time. Before a contract extension is initiated, the park and region should determine if a 1 or 2-year extension will allow sufficient time to fully effect a new contract before the proposed extension expires. If not, or if there is a reasonable doubt that it will not, the park and region should consider issuing a 5-year contract to ensure that further extensions will not be necessary. In the event that a 5-year status quo contract is executed, and it turns out that, for example, only 3 or 4 years are needed under that arrangement, then the 5-year contract can be superseded and cancelled for a longer term contract.

A contract extension must be effected by means of a formal amendment to the contract, should not be longer than 1 or 2 years in duration, and should be in place before a contract expires. More than one extension of a contract is not advantageous to either the concessioner or the Service and damages our credibility with concessioners.

In order for an extension to be in place before the expiration date of the existing contract, a number of advance actions are needed:

a. The concessioner must be advised of and concur in the proposed extension. Concessioners should be notified well in advance of the contract expiration date of the proposal to extend the contract. They must be informed of the proposed term of the extension and why it is needed. Concurrence in the extension should be obtained in writing.

b. From a legal standpoint, an extension of an existing concession contract or permit constitutes an "award" of a concession contract or permit and, therefore, requires that a public notice be published in the "Federal Register" which provides for a minimum of 60 days from the date of publication of the notice for interested parties to submit offers unless a written determination is made that a shorter period is necessary because of exceptional circumstances. Notwithstanding the foregoing, the public notice must explain why the NPS considers any predetermined response period to be sufficient time for applicants to submit offers. The public notice for an extension should be handled in the same manner as the public notices issued for the renewal of contracts and permits.

c. The extension must be reported to the Congress for a 60-day waiting period if the annual gross receipts are expected to be \$100,000 or more and/or the term of the expiring contract or permit is for 5 years or more. (Handle the same as described for the Execution and Distribution of Contracts and Permits in Chapter 9 of this Guideline.)

d. Extensions of contracts not entailing construction have been determined to be categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA). Those entailing construction should be checked against the list of exceptions to categorical exclusions which appear in NPS-12, and the public notice should be prepared accordingly.

Contract extensions may be effected by a formal amendment to the contract. Permit extensions may be effected by a letter amendment. A sample of both is attached to this Chapter as Exhibits 3 and 4 respectively. These may be modified as needed to meet any special circumstances.



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

S A M P L EINTERIM LETTER OF AUTHORIZATIONMr. _____
President
XYZ Corporation

Dear Mr. _____:

The enclosed proposed concession contract is for your execution on behalf of XYZ Corporation, under which it will be authorized and required to provide, operate and maintain facilities and services at _____ National Recreation Area. This proposed concession contract, when executed by the United States, will be effective as of the date of execution and will be for a term of approximately _____ years through December 31, _____.

Since it is mutually agreed that these facilities should be maintained and operated as promptly as possible in order that the properties will be adequately protected, and that the various facilities and services should be available to meet visitor demands at the park area, this letter shall, upon acceptance by you as evidenced by your execution hereof, constitute the interim authorization to initiate maintenance, services and operations as soon as possible, pending final execution of the concession contract. The maintenance, operations and services rendered during the term provided for herein shall be pursuant to the terms and conditions set forth in the proposed concession contract, including Franchise Fees, which are incorporated by reference, except as otherwise provided in this interim authorization.

This interim authorization shall terminate upon the execution of the proposed concession contract on behalf of the United States, or on _____, 19_____, whichever occurs first. In the event that the contract is not executed by _____, 19_____, this letter of authorization may be extended for reasonable additional time.

It is agreed that this interim authorization gives XYZ Corporation the authority to proceed with the improvement and building program as outlined

CONCESSIONS

NPS-48

Contract Modification Documents

EXHIBIT 1

Chapter 10

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in the proposed contract and that any monies expended toward the improvement and building program during the period of this interim authorization will be credited toward the required expenditure specified in the proposed contract.

Please indicate your acceptance of this interim operating authority by having the enclosed three copies of this letter executed by a duly qualified corporate official and return them to this office.

Sincerely yours,

Director

Accepted this _____ day of _____, 19____.

ATTEST:

XYZ CORPORATION

By _____

By _____

Title _____

Title _____

Enclosures

SAMPLE AMENDMENT TO CHANGE FINANCIAL REPORTING DATE
AND PAYMENT OF FRANCHISE FEES

AMENDMENT NO. _____
CONCESSION CONTRACT NO. _____
(NAME OF CONCESSIONER) _____
(PARK OR AREA) _____

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Regional Director, _____ Region, National Park Service, hereinafter referred to as the "Secretary," and _____ (NAME OF CONCESSIONER), a _____ (CORPORATION, PARTNERSHIP, etc.) organized and existing under the laws of the State of _____, herinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. _____ on _____, 19____, whereby the Concessioner is authorized to provide facilities and services for the public within _____ (Name of Area), during the period _____, 19____, through _____, 19____.

WHEREAS, the said concession contract has been amended by letters dated _____, 19____, and _____, 19____; and

WHEREAS, the said concession contract requires the Concessioner to submit an annual financial report and pay the franchise fee within ninety (90) days after the 31st day of May of each year; and

WHEREAS, the said Concession Contract requires subconcessioners, if any, to report the full amount of their gross receipts to the Concessioner within forty-five (45) days after the 31st day of May of each year; and

WHEREAS, the said Concession Contract requires the Concessioner to pay to the Secretary within ninety (90) days after the 31st day of May, each year a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner under approved sub-concession contracts or agreements; and

WHEREAS, the Concessioner operates on a calendar year fiscal basis and desires to change its annual financial report and related reporting and fee payment due dates to the said fiscal year basis; and

WHEREAS, the Secretary has determined that it is in the public interest to permit the Concessioner to proceed on a fiscal year basis corresponding to that which the other corporate transactions are based:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. _____ is hereby amended as follows:

1. Amend Section _____, ACCOUNTING RECORDS AND REPORTS, as follows:

Amend subsection () by deleting "the 31st day of May" in line _____, and substituting in lieu thereof "the 31st day of December."

2. Amend Section _____, FRANCHISE FEE, as follows:

Amend subsection () by deleting "the 31st day of May" in line _____ and substituting in lieu thereof "the 31st day of December."

3. Amend Section _____, APPROVAL OF SUBCONCESSION CONTRACT, by deleting "the 31st day of May" in line _____ and substituting in lieu thereof "the 31st day of December."

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at _____, this _____ day of _____, 19____.

UNITED STATES OF AMERICA

By _____
Regional Director _____ Region
National Park Service

ATTEST: _____ (NAME OF CONCESSIONER)

By _____
Title _____

By _____
Title _____
Date _____

SAMPLE

Formal Extension of Concession Contract

AMENDMENT NO. _____

CONCESSION CONTRACT NO. _____

(Name of Concessioner) _____

_____ National Park

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior through the Regional Director, _____ Region, National Park Service, hereinafter referred to as the "Secretary" and _____ (Name of Concessioner), a _____ (CORPORATION, PARTNERSHIP, ETC.) _____ organized and existing under the laws of the State of _____, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, Concession Contract No. _____ was entered into on _____ (date) _____, with _____ (Name of Concessioner) _____, effective _____ (Date) _____, authorizing the Concessioner to provide accommodations, facilities and services for the public within _____ National Park, _____; and

WHEREAS, Concession Contract No. _____ expires by limitation of time on _____ (Date) _____, and the parties mutually agree that it should be extended to authorize the Concessioner to continue to serve the public; and

WHEREAS, the Secretary has determined that it is in the best interest of the United States to extend this contract in order to provide continuity of operation and services to the public while planning is completed concerning the future operation of the concession facility:

NOW THEREFORE, the parties hereto covenant and agree to and with each other that Concession Contract No. _____ is hereby extended in all of its terms and conditions for an additional term of _____ year(s) from _____, through _____.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at _____, this _____ day of _____, 19____.

UNITED STATES OF AMERICA

By _____
Regional Director, _____ Region
National Park Service

ATTEST:

(Name of Concessioner)

BY _____

By _____

Title _____

Title _____

Date _____

SAMPLE
LETTER OF EXTENSION FOR A CONCESSION PERMIT

Dear Mr. _____:

Concession Permit No. _____ entered into between the National Park Service and _____ (Name of Concessioner), expires(d) by limitation of time on _____ (Date). It is our intention to negotiate a new concession permit authorizing the continuance of the services that you are presently providing when (viz., planning is completed).

However, in order to meet visitor demands and to provide continuity of said (Firewood sales, etc.) services, this letter shall, upon acceptance by you as evidenced by your execution hereof, serve as an extension of Concession Permit No. _____. This extension, which is effective _____ (Date), shall terminate on _____, or upon the execution of a prospective new contractual document on behalf of the National Park Service, whichever occurs first, except as it may be terminated at an earlier date in accordance with Sec. _____ of the permit.

Please indicate your acceptance of this extension by executing the original of this letter, as provided for below. Please return the original letter to our office. A signed carbon copy is enclosed for your files.

Sincerely,

Regional Director
_____ Region

Enclosure

ACCEPTED THIS _____ day of _____, 19__.

ATTEST:

By _____

By _____

Title _____

Title _____

CONTRACT PROVISIONS

A. PREFERENTIAL RIGHT TO PROVIDE ADDITIONAL SERVICES

The preferential right to provide additional services is discretionary and should be included in a contract only upon a specific determination that granting such a right is in the public interest. This right has been defined by the Solicitor's Office as a "right of first refusal" to provide such additional concession accommodations, facilities and services of the same character as required and authorized by the concession contract.

If a concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional accommodations, facilities, or services or declines or fails within a reasonable time to comply with the designation of the Secretary, then the Secretary in his discretion may authorize others under substantially the same terms and conditions to provide such designated accommodations, facilities or services.

In establishing the area of preferential right, consideration must be given to the facilities and services authorized any other concessioner in the park to assure there is no overlap in either the area or the service.

A preferential right to provide additional services can:

1. Include an entire park or area and all services and facilities to be provided therein.
2. Include all services and facilities within a certain portion of a park or area.
3. Be restricted to the facilities and services authorized under the contract, but include the entire park or area.
4. Be restricted to the facilities and services authorized under the contract and to a certain area of the park. In this case, also, the area should be delineated on an exhibit to the contract.

The right of preference of an existing satisfactory concessioner to continue operations under a new concession contract or permit (Right of Preference in Renewal) should not be confused with "preferential right" to provide additional facilities and services sometimes granted under a concession contract.

B. POSSESSORY INTEREST

The reader must bear in mind that the following dissertation is based on the current standard concession contract language which has been in effect since February 1981. There are many existing contracts that were around prior to that

time which utilize different standard concession contract language not only with respect to possessory interest but in other respects as well. Accordingly, the person using this manual may find it difficult to correlate the following with their specific concession contracts.

In actuality, while the verbage may be different in the current standard contract language there really is no difference in its application pursuant to P.L. 89-249 than in the past. The real difference is in the method by which concessioners may be compensated for their Possessory Interest under different and varying circumstances. Should you require additional information on this matter you should feel free to contact your Regional Chief of Concessions, and/or your Region/Field Solicitor or the Concessions Division in WASO.

1. Definitions

a. GOVERNMENT IMPROVEMENTS

Improvements constructed or acquired by the Government that are provided (assigned) to the concessioner for use in the concession operations. They may include buildings, structures, utility systems, fixtures, equipment and other improvements affixed to the assigned government land and are part of the realty.

b. CONCESSIONER IMPROVEMENTS

Improvements constructed or acquired by the concessioner with the written consent of the Secretary, for the purpose of the contract on assigned government land. This does not include improvements the concessioner makes to government improvements. The concessioner has no interest in the assigned land. Such improvements include buildings, structures, fixtures, equipment and other improvements affixed to the assigned government land and are part of the realty.

c. JUST COMPENSATION

Reconstruction cost less depreciation, not to exceed fair market value, unless otherwise provided by agreement of the parties. This definition is also referred to as "sound value." Unless by other agreement, just compensation equals sound value at the time of taking based on reconstruction cost less depreciation evidenced by its conditions and prospective serviceability in comparison with a new unit of like kind not to exceed fair market value.

d. SOUND VALUE

As set forth in P.L. 89-249, sound value of structures, fixtures, or improvements at the time of taking by the United States is determined upon the basis of reconstruction cost less depreciation evidenced by its condi-

tion and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value.

e. BOOK VALUE

This is the value of property as shown on the books of a business operator (concessioner). Simply stated, it is determined to be the cost of property less depreciation.

f. FAIR MARKET VALUE

The amount a willing buyer is willing to pay a willing seller in the open market.

2. Concession Contracts

Section 6 of Public Law 89-249 grants to concessioners a possessory interest in any structure, fixture or improvement which they acquire or construct with the approval of the Secretary on land owned by the United States within the National Park System. Possessory interest, in effect, is the concessioner's partial ownership (compensable interest) in Government acquired or constructed buildings, structures and facilities and/or concessioner acquired or constructed buildings, structures and facilities and, as such, is a potential liability (see Compensation Section) of the United States. This possessory interest includes all incidents of ownership except legal title which is vested in the United States.

Even though legal title to improvements is vested in the United States, the Concessions Act specifically states that the (concessioner's) possessory interest may be assigned, transferred (sold), and encumbered (mortgaged for concession construction and/or provide collateral for loan used to purchase the concession operation) by the concessioner. In addition, possessory interest "shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation."

Possessory interest does not include or imply any authority, privilege or right to operate or engage in any business or other activity. Possessory interest does not extinguish with expiration or other termination of the contract and may not be taken for public use without just compensation. Possessory interest may be assigned, transferred, encumbered or relinquished.

It is important for the reader to understand that the National Park Service recognizes only those assets which are affixed to the real estate (fixed assets) and considered to be part of the real estate as defined by the law of each State wherein located or in which specific approval was given by the Secretary or his designee. Possessory interest does not include personalty, viz, automobiles, knives, forks, linens, freely moveable tables, chairs, etc.

The Office of the Solicitor has interpreted Section 6 of P.L. 89-249 to mean that concessioners have possessory interest in concessioners' improvements which, by law, cannot be waived or extinguished except in special circumstances. In that opinion the Solicitor states in part, "****the just compensation for taking of the possessory interest may be defined by the contract to be other than reproduction (reconstruction) cost less depreciation. A provision for amortization of improvements over the term of the contract, with compensation for the unamortized balance in the event of termination prior to expiration, represents, in the abstract, an acceptable measure of compensation." The foregoing is one example of a "special circumstance."

In order to solve special problems at certain parks, the Service has negotiated special concession contracts in which, among other things, standard possessory interest compensation as set forth in Public Law 89-249 was replaced by provisions requiring amortization of the possessory interest over the life of the contract. While this procedure can be an appropriate solution to special problems, each of those special contracts was closely guided by the Washington Office. As a matter of policy, however, possessory interest should be used as provided for in the standard contract language. Exceptions to amortizing possessory interest should be entertained on a case-by-case basis where a service is being discontinued or improvements are additions to Government improvements. Adjustments of possessory interest compensation should occur only after thorough analysis by the field and written justification sent to the Director for his written approval.

3. Compensation For Possessory Interest Pursuant To Section 12 Of The Standard Concession Contract Language:

a. JUST COMPENSATION: The compensation described in subsequent subsections to Section 12 constitutes full and just compensation from the Secretary to the concessioner.

b. CONTRACT EXPIRATION OR TERMINATION WHERE OPERATIONS ARE TO BE
CONTINUED

The Concessioner must sell its possessory interest in Government-owned improvements to a successor to the extent of book value. The successor will not be permitted to revalue such possessory interest. For possessory interest in concessioner improvements, the successor will pay the sound value thereof not to exceed fair market value.

If the concessioner and the successor, excepting Government agencies, cannot agree upon the fair value of any item or items, either party may serve a request for arbitration upon the other party pursuant to established arbitration procedures as stated in Section 12 of the contract.

c. CONTRACT EXPIRATION OR TERMINATION WHERE OPERATIONS ARE TO BE DISCONTINUED

If for any reason, including contract expiration or termination, the Secretary no longer requires the concessioner to conduct the authorized operations, or substantial part thereof, and operations are to be discontinued, and the Secretary chooses to abandon, remove or demolish any of the concessioner's improvements, the Secretary will take necessary action to compensate the concessioner for its possessory interest in Government and concessioner's improvements in the amount of book value (unrecovered cost as shown in Federal Income Tax Returns). Refer to standard contract language for non-possessory interest reimbursable costs to the concessioner.

d. CONTRACT TERMINATION FOR DEFAULT FOR UNSATISFACTORY PERFORMANCE WHERE OPERATIONS ARE TO BE CONTINUED

If the Secretary terminates a contract for default for failing to maintain and operate the concession to the satisfaction of the Secretary, the concessioner will be compensated at book value for any possessory interest in concessioner's improvements as described in subsection 12(c) of the contract.

NOTE: In all circumstances compensation to a concessioner for its possessory interest in Government improvements, paid by the Government or a successor concessioner, will be in the amount of book value.

4. Concession Permits

Section 6 of P.L. 89-249 (Possessory Interest) specifically mentions "contracts" and not "permits." Yet, the term "permit" is generally interlaced throughout the rest of the law. Because of its conspicuous absence from Section 6, it is our conclusion, and that of the Solicitor's Office, that Congress, in legislating P.L. 89-249, did not intend that concession permittees have a possessory interest.

Special regulations for concession contracts and permits are incorporated in 36 CFR Part 51.3(a), Definitions, which states in part as follows: "**** Concession Permits are generally utilized where the authorized concession operations are not expected to gross more than \$100,000 annually, where the term *** is less than five (5) years, where no possessory interest is to be granted to the Concessioner, ***." (Emphasis added). Simply put, if a proposed concession authorization will require the granting or recognition of a possessory interest, it should be a concession contract authorization.

C. SUBCONCESSIONS

1. Law

None

2. Regulation

None

3. Policy

Management Policies Manual, Chapter VIII
Subconcessions

The National Park Service does not encourage and generally will not approve subconcession contracts or agreements unless: (1) the proposed subconcession operation is essential to provide better service to the public, and (2) the prime concessioner furnishes the basic facilities and/or services to the subconcessioner.

Any subconcession contract or agreement that a prime concessioner proposes to enter into that would authorize a third party (subconcessioner) to exercise certain responsibilities or privileges under the prime concession contract must be approved by the Secretary before becoming effective.

In the event that a subconcession contract is approved, the concessioner is required to pay to the Secretary within a prescribed time (in addition to the franchise fee payable on both the total gross receipts of the subconcessioner and of the prime concessioner, as provided for in the concession contract), fifty percent (50%) of any and all fees, commissions, or compensation payable to the concessioner by the subconcessioner.

A subconcession may not be permitted under any concession authorization except a concession contract.

4. Procedures

A subconcession agreement as noted above, is an agreement or contract "entered into by the concessioner with respect to the exercise by others of the privileges granted" by a concession contract. In determining whether an agreement constitutes a subconcession contract, it should not be determined by application of strict legal definitions (viz. agent vs. independent contractor) or by

simply determining if a fee is paid by a third party to the concessioner; but rather, by the degree to which management control and responsibility is transferred to a third party by the agreement. Section 14 of the Standard Concession Contract Language is intended to require approval of the third party contractual arrangements by the National Park Service so as to assure that the responsibilities, performance, and financial risks assumed under the concession contract substantially continue to rest with the concessioner of record.

Criteria in determining whether a proposed agreement constitutes a subconcession, the following points should be considered:

a. Does the proposed agreement clearly purport to authorize a third party to exercise certain of "the privileges granted by" the concession contract?

b. Does the agreement shift the risk of loss onto the third party? This is a principal indication of assumption of management control.

c. Do other provisions of the proposed agreement show evidence of the assumption of substantial management responsibility and control by the third party? For example, will the proposed agreement:

(1) Permit the third party to hire all personnel for the operations, subject only to disapproval by the concessioner?

(2) Give the concessioner a percentage of gross receipts in return for the privileges by the agreement, which effectively shifts risk of loss to the third party?

(3) Relieve the concessioner of any liability with respect to the operation, possession, ownership or control of the facilities used in the operation?

(4) Permit termination of the relationship by the concessioner if in its reasonable discretion there is a failure to perform.

(5) The concessioner designates the items to be sold and the prices thereof.

Agreements made between vending machine companies and an NPS concessioner are not to be considered as subconcession agreements when the following conditions exist:

a. The agreement constitutes only a lease of equipment and a supply contract for items sold;

b. The concessioner designates the items to be sold and the price thereof; and

c. The concessioner is responsible for maintaining the area where the vending machines are located.

A subconcession may not be permitted under any other concession authorization except a Concession Contract.

D. CONTRACT/PERMIT TERMINATION AND SUSPENSIONS

1. Contract Termination

Contract terminations do not occur often--but they do occur. The termination process can be very expensive in terms of NPS staff time, compensation for possessory interest, if necessary, and to the park visitor in the form of unsatisfactory accommodations, facilities and services. The Concessions Review Program is a very important adjunct to the Concessions Management Program to detect potentially unsatisfactory performance early on before minor deficiencies become major, which could lead to termination.

A concession contract may be terminated in whole or part at any time for the following reasons:

a. DEFAULT. The terms "breach of contract" and "default" are synonymous. A default is a breach of any contract requirement including failure to maintain and operate required accommodations, facilities and services to the satisfaction of the Secretary. In addition, pursuant to Chapter 19 of this Guideline pertaining to the Concessioner Review Program, a concessioner is in default of its contract if its annual overall rating is (i) unsatisfactory for a given year; or (ii) marginal for 2 consecutive years.

b. PROTECTION OF VISITORS. Threats to visitor health or safety because of unsanitary conditions, poorly maintained facilities and services, fire safety hazards and geologically hazardous conditions could result in termination.

c. PROTECTION OF AREA RESOURCES. Destructive compaction of trails by horses and mules, intrusions on wildlife habitats, and damage to the ecology of an area exemplify conditions where termination could be used to protect park resources.

d. FAILURE TO OBTAIN PRIOR APPROVAL FROM THE DIRECTOR FOR SALES, ASSIGNMENTS, OR ENCUMBRANCES OF CONCESSION CONTRACTS, PERMITS AND ASSETS. Transfers, sales, assignments, or encumbrances consummated in violation of 36 CFR 51.7 shall be considered a breach of the contract or permit and shall be considered null and void by the Director.

e. DISCONTINUATION OF OPERATIONS IF SERVICES AND ACCOMMODATIONS ARE DEEMED TO BE NO LONGER NECESSARY AND APPROPRIATE. Should it be determined that the operations are no longer needed the concessioner should be given formal written notification of this determination along with supporting documentation. This cannot be determined at the last minute but should be determined during the life of the concession authorization. Prior to such a determination, steps must be taken to secure funds for compensating the concessioner for its possessory interests and any other interests, if applicable, in accordance with the contract. (See Subsection 12(c) of the Standard Contract Language.)

In considering termination actions primary emphasis should be given to those default situations affecting the quality of visitor services, those posing imminent threats to the safety, health and welfare of the public and threats to property. Default on provisions of the contract not having a direct effect on visitor services are of secondary importance and can be given more time for compliance if deemed in the public interest to do so. Any one factor or combination of factors should be carefully weighed in this context before arriving at a decision to terminate.

Upon arriving at a decision to terminate, the following initial concerns should be reviewed:

a. Inasmuch as terminations can have substantial legal ramifications with potential for court litigation, the nature of default, along with all supporting correspondence and documents, should be reviewed with the Field Solicitor. All correspondence with concessioners relative to terminations should be reviewed by the Solicitor before it is issued.

b. Review impact on visitor services. Will there be a temporary interruption? Will the existing concessioner be required to operate until a successor is selected? What further studies are needed before a prospectus can be issued? The Washington Office should be promptly notified of proposed termination actions. It may be advisable in some instances for the Superintendent or Regional Director to council with Congressional representatives of the applicable state so that we have their support.

c. Determine financial liabilities to the Government as accruing from the proposed termination. In most events the possessory interest would be acquired by a successor if the operations are to be continued. However, there could be circumstances requiring compensation by the Service to the concessioner for certain possessory interest items. There may also be expenses for appraisals, studies and investment in support facilities connected with the termination and placement of the operations under new management. These costs must be identified and programmed. Compensation for possessory interest is a contractual commitment upon the United States.

d. Monies owed the United States for franchise fees, utility services, etc. The concessioner is obligated to submit a financial report through

its final date of operation and pay all outstanding franchise fees and other debts due and owing to the United States. Every reasonable effort must be made to collect the monies that are due. Since the United States holds the first lien on concessioner's assets, any outstanding amounts owed the United States should be considered in the final disposition of the concessioner's assets as follows:

(1) If sold to a successor, responsibilities for any debts to the United States must be stated in the sales agreement;

(2) If assets are attached or repossessed by a creditor the United States has the right of first lien and prior approval; and

(3) If compensation is owed the concessioner for possessory interest, any amounts owed the United States should be deducted therefrom.

In proceeding with terminations the contract provisions that become applicable are as follows:

a. The section or sections of the contract in which the concessioner is in default. The applicable section(s) must be cited and it must be explained how and why the concessioner is in default.

b. The termination section (Sec. 11 of the current contract language). The contract language on termination used in older contracts (those prior to 2/13/81) varies from the current standard contract language. The language of the contract in question must be explicitly followed.

c. The Section regarding "compensation" (section 12 of the current contract language), specifies how the concessioner is to be compensated for its possessory interest, if any, either by acquisition by the Service or sale to a successor. This provision of the contract remains active after contract termination or expiration until such time as possessory interest claims are settled. The language on compensation can vary between contracts and the contract that is being terminated must be carefully reviewed and followed.

d. Section regarding "Accounting Records and Reports." A financial report must be submitted through the final date of operation which, among other things, establishes the amount of franchise fee that is due.

e. Section regarding "Franchise Fee." All outstanding franchise fees must be paid through final date of operation.

f. Section regarding "Utilities." If utilities are furnished to the concessioner all outstanding amounts through final day of operation must be collected.

All of the above contractual provisions and concerns thereunder as applicable must be spelled out to the concessioner in the letter of termination.

Termination procedures and the time involved can vary in a number of ways depending upon the services provided, nature of default, the contract language, and possessory interest situation. Therefore, no specific procedures can be laid out other than these general guidelines. Terminations are detrimental to the Service and public and should be avoided if possible. There are, however, situations that come about where terminations must be made in the interest of the public. The important things are:

- a. careful deliberation of the need to terminate and consideration of viable options;
- b. work with the field solicitor;
- c. consider any program funding requirements; and
- d. keep Regional and WASO officials informed.

Copies of the letter of termination should be forwarded to all offices involved in the distribution list for the concession contract.

2. Contract Suspension

A concession contract may be suspended in whole or part when it is necessary to protect (i) the health and safety of visitors and employees; and (ii) area resources as described above under "Termination."

The difference between a concession contract termination and a suspension is that a termination is of a permanent nature while a suspension is generally for a relatively short period of time until a problem situation can be corrected.

Section 11(a) of the Standard Contract Language states that the concessioner must be advised in writing in the event that a termination or a suspension action is contemplated. In the event that it is proposed to terminate a concessioner for default, the concessioner must be given a reasonable opportunity to correct any stated deficiencies before final termination proceedings begin.

Since items of default that may culminate in termination do not occur "overnight", it is vitally important that Superintendents maintain open lines of communication with concessioners in a continuing effort to resolve any emerging difficulties. When it is apparent that the concessioner is not taking necessary and expeditious steps to rectify problem areas, it is very important to

thoroughly document park and regional files with any and all correspondence with the concessioner in the event that the concessioner would appeal termination proceedings and/or pursue litigation. (See Section 17, Disputes, of the Standard Concession Contract Language and Paragraph E. below.)

3. Termination Authority

Pursuant to the delegation of contracting authority which was effected March 6, 1979, Regional Directors have authority to terminate all concession contracts and permits. If authority has been redelegated by Regional Directors, Superintendents may terminate only those concession permits that are under a 5-year duration or where gross receipts will amount to less than \$100,000.

E. DISPUTES

Any dispute, or claim, concerning a concessioner's contract which is not disposed of by agreement shall be decided by the Regional Director, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the concessioner. The decision of the Regional Director shall be final and conclusive, unless, within 30 days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Regional Director a written notification of appeal addressed to the Director.

When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board of Contract Appeals may in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. Only contract appeals where a concession contract contains a disputes clause fall within the purview of the Board of Contract Appeals pursuant to 43 CFR 4.101. Issues concerning contracts without a disputes clause and permits may be appealed to the Director.

The Washington Office will assist the Regional Directors, on request, in the handling of any appeal which may be taken to them. Any requests for such assistance by the Washington Office should be accompanied by a complete file of pertinent information and comments to enable giving full consideration to all justifications and data submitted by the concessioner.

F. SALE AND TRANSFER OF OWNERSHIP INTERESTS

1. Law

See Chapter 5., paragraph A of this Guideline.

2. Regulation

See Chapter 5, paragraph B of this Guideline.

3. Policy

Management Policies Manual, Chapter VIII

Concessioners or entities holding an ownership interest in a concession may sell their interest, or part of their interest, to another entity as long as the appropriate National Park Service requirements are met and approvals granted prior to the transfer. Transfers of interest that occur without meeting National Park Service requirements constitute a material breach of the contract and are cause for immediate termination.

Debt incurred for purchase or the purchase price paid for a concession will not be used as justification for: (1) a rate increase beyond the point of reasonable comparability pursuant to Section 3(c) of P.L. 89-249; (2) a waiver or reduction of franchise fees; or (3) a claim that a reasonable opportunity to realize a profit pursuant to Section 3(b) of P.L. 89-249 is being denied.

The purpose of the National Park Service program of review and approval of transfers of interest is to ensure that the concessioner will be in a legal, managerial and financial position to meet the terms of the contract and provide the appropriate services to the public. As such, the same care should be taken and tests made in a transfer of interest as are performed in an evaluation of offers in response to a National Park Service solicitation.

4. Procedures

a. INTRODUCTION

Concessions are operated in National Park Service (NPS) areas pursuant to contractual agreements between concessioners and the NPS. These agreements, defining the rights and responsibilities of each party, can only be transferred to prospective concessioners with the approval of the Director, or his designated representative.

Standard contract language has been expanded to reflect regulations which tighten the review process and specify the procedures and criteria used. This document is meant to supplement these two sources. However, in any proposed transaction, both the applicable authorization and 36 C.F.R. Part 51.7 should be studied.

Changes in any one of the owners of the business constitutes a change in ownership according to the contract and requires NPS approval. This

action is required regardless of the number of owners associated with the organization.

As a practical matter, the Park Service cannot be involved with minor changes in ownership. Hence, the regulations require different procedures for changes involving a controlling interest from those involving less than controlling interest. We try to concentrate on those changes which might have a material affect upon the concessioner's management or financial policy.

b. BUSINESS STRUCTURES

For purposes of this section, there are three basic types of business structures and the Park Service routinely contracts with each of the three types.

- Sole proprietorship
- Partnership
- Corporation

A sole proprietorship is the simplest form of business organization. The business has no existence apart from its owner. The liabilities are the owner's personal liabilities and the proprietary interests end on death. The owner undertakes the risks of business to the extent of all assets, whether used in the business or personally owned.

A partnership is the relationship existing between two or more persons who join together to carry on a business. Each person contributes money, property, labor or skill, and expects to share in the profits and losses of the business. A partnership agreement is usually necessary to define the rights and responsibilities of each partner, as well as the division of profits. The existence of the partnership is not separate from the owners, and like a sole proprietor, a legal action against the business can be expanded to the owners.

A corporation is a separate legal entity entirely independent from its owners (usually stockholders). Evidence of ownership is a share of capital stock. These shares may be transferred from owner to owner without affecting the day-to-day operation of the business. Using the share as the basis of ownership allows flexibility in the number of owners in case of transfer, and in the ability to raise additional capital. A corporation is under the direction of a Board of Directors who are elected by the stockholders. They, in turn, appoint the operating officers who run the business on a day-to-day basis.

A corporation may own the stock of another corporation. This type of ownership allows for a parent-subsidiary relationship between companies. It is also possible to have a corporation without stockholders but in this case, the bylaws will have to establish the method of electing the Board of Directors.

A corporation is established or "incorporated" by a state which issues the article of incorporation. Each state differs in its laws and regulations and the corporation's by-laws must reflect these documents.

c. TYPES OF TRANSFERS

For purposes of this section, there are two types of transfers of concession ownership.

(1) **Asset Purchase**

In an asset purchase, the assets of an existing concessioner are purchased by another entity and when approved by the Service that entity is given the right to operate. Included in the purchase are the possessory interest assets. The Service shall require the proposed concessioner as a condition to the approval to assume all liabilities due the government. This shall include but is not limited to franchise fees, utilities, etc.

In an asset purchase, a new concessioner will allocate the purchase price to the assets acquired. However, in no event should the assets be revalued at greater than their fair market value. Such value is best arrived at through a professional appraisal. Any amounts which are in excess of the fair value of the assets acquired should be reflected by a concessioner as an intangible asset, usually goodwill. Generally, as a condition to the transfer, the Service will require a concessioner to submit an Opening Balance Sheet accompanied by a Schedule of Possessory Interest Assets Claimed. (See Chapter 24, paragraph E.)

(2) **Stock Purchase**

The transfer of ownership of a corporation may be accomplished by purchase of the voting stock of the concession. While the owners of the corporation change, the entity with which the NPS has contracted has not. The "books" of the corporation do not change because the corporation itself is not a party to the transaction. However, as management policy can change, the NPS nonetheless considers this a transfer requiring approval.

Under certain circumstances after a stock purchase, a corporation may choose to reorganize. At the time of such reorganization, a corporation may also elect to adjust its books to reflect the stock purchase and revalue its assets. Generally, as a condition to the stock purchase, the owners should be advised in writing that any reorganization in the future with a revaluation of assets will require approval by the Service.

With both an asset purchase and a stock purchase, it is the responsibility of the Service to insure that the values placed on the fixed

(possessory interest) assets be no greater than the fair value. Such amounts are a contingent liability payable by the Government should the operations be discontinued.

Payment for the assets or stock can take many forms and generally are not a factor in approval of the transfer. Some types of payment, such as stock, may postpone the tax liability of the seller and, hence, become a major factor in the negotiations between buyer and seller.

Assets outside park boundaries may be sold without NPS approval, even though carried on concession books. However, if the assets are necessary for satisfactory operation within the park, service will suffer and the conditions of the contract may not be met.

d. CONTROLLING INTEREST

Existing concessioners may transfer controlling interest to others only upon receiving prior written approval. Since the Service is concerned with changes in the management of a concession, it has issued regulations which define "controlling interest". See 36 CFR §51.7(b).

As most of the concessioner's are closely held corporations, the majority of transfers will usually be either minor stock transfers or total (100%) stock transfers. There have been very few transfers which would be considered controlling interest transfers involving less than 50% stock ownership.

e. REVIEW DOCUMENTS

Prior to approving a transfer of a controlling interest, the Service should receive and review various transfer documents which include but are not limited as follows:

(1) All instruments used to implement the transfer:

- (a) The sales agreement
- (b) Any security or warranty agreements
- (c) Loan documents
- (d) Articles of Incorporation and by-laws of buyer

corporation

(e) Corporate resolution authorizing the proposed transaction.

(2) An opinion of Counsel from buyer to the effect that the transaction is lawful under all applicable Federal and State laws.

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation.

(4) A statement as to the existence or nonexistence of any litigation questioning the validity of the proposed transaction.

(5) A description of the management qualifications and experience.

(6) Personal financial statements of the key owners together with the latest corporate financial statements.

(7) A listing of claimed possessory interest assets allocating the purchase price to such assets and including supporting documentation.

(8) Third party personal and business references.

(9) Letters of commitment from prospective lenders.

(10) Such other information as the Director may require.

In reviewing the documents, the same care should be taken in reviewing a transfer of a controlling interest as the Service takes in reviewing the documents received from prospective concessioners responding to the Service's Prospectus/Fact Sheet requirements seeking a new concessioner or renewing a contract with an existing concessioner. See Chapter 8 on Evaluation of Offers.

f. APPROVAL DOCUMENTS

(1) **Asset Purchase**

Approval must be given in writing for any transfer of ownership that is considered to be a controlling interest. The approving official should be the one delegated the authority over the authorization as follows:

Permits under 5 years in duration and which gross less than \$100,000 are the responsibility of the Superintendent

Permits of 5 years or more and grossing \$100,000 or more and all contracts are the responsibility of the Regional Director.

The approval document for a purchase of assets will consist of the 3-part Assignment, Acceptance, and Approval document, executed by the seller, buyer and NPS official. An effective date for the transaction must be indicated in the documentation. The Assignment and Acceptance portion con-

tain an attestation line for corporations. Concessioners should be advised that these lines have to be fully executed by the appropriate corporate offices before the contract can be considered legal and binding.

Conditions placed on the sale should be listed in the appropriate part of the document so that the conditions become a part of the agreement. As an alternative, conditions may be included in a letter and tied in with the Assignment, Acceptance and Approval document. A sample Assignment, Acceptance, and Approval document is included as Exhibit 1.

(2) **Stock Purchase**

The approval document for a stock purchase should consist of a letter to the current concessioner with a copy to the proposed purchaser. A space should be provided for the signature of both parties with instructions to return the document after execution. An effective date for the transfer will be indicated in the letter.

The letter will include an approval statement and list any conditions to this approval. Signatures by the parties involved will signify their acceptance of the conditions. The letter should also include a brief summary of the transaction and any points that need clarification or emphasis.

A sample conditional stock approval letter and subsequent approval letter are included as Exhibits 2 and 3.

g. APPROVAL CONDITIONS

When approving a transfer, the following language will be included as a condition to our approval:

"The transfer of ownership is approved on the condition that debt incurred for purchase or the purchase price paid for the concession will not be used in the future as justification for:

- a. A rate increase beyond the point of reasonable comparability pursuant to Section 3(c) of P.L. 89-249;
- b. A waiver or reduction of franchise fee;
- c. A claim that a reasonable opportunity to realize a profit pursuant to Section 3(b) of P.L. 89-249 is being denied."

In addition, the Service will include in the approval document such other conditions as are deemed appropriate. These conditions will vary

depending on the circumstances. Such conditions are included in the sample approval documents shown in Exhibits 1 and 2.

h. TRANSFER OF NONCONTROLLING INTEREST

Prior to a transfer of a noncontrolling interest, the concessioner must notify the Director in writing and include information as to why it is not a controlling interest. The concessioner must also submit identification of the transferee. The Director will review the notification and if in agreement advise the concessioner in writing. Failure to notify the Director of any proposed transfer of a noncontrolling interest may make the proposed transfer null and void and constitute a material breach of the Contract or Permit.

The Park Service retains the right not to approve a proposed transfer regardless of the size of the interest.

Included below are examples showing transfers of noncontrolling interests:

(1) The Board of Directors of XYZ Corporation, Inc. decided that the "Z" portion of the company's name carried connotations unacceptable to some members of the public. The name was changed to XY Corporation, Inc.

(2) John Smith, a sole proprietor, became aware of certain tax advantages related to subchapter "S" corporations. Thus, John Smith incorporated his business under the name of Recreation World, Inc.

(3) When a need for additional funds to develop facilities contracted for by XY Corporation Inc., was identified, some of the original stockholders could not raise the money. Thus, those that could subscribed to more than originally planned. No new stockholders were brought in, but the ratio of holdings was changed.

(4) Upon the death of Mr. Smith of the Smith and Jones partnership, the probate courts awarded Mrs. Smith his interest in the business. A new partnership agreement was executed making Mrs. Smith and Mr. Jones partners in the business.

(5) Shortly after conclusion of an extended process of securing a new contract for Recreation World, Inc., one of the stockholders offered the primary stockholder all of his shares. The offer was accepted and John Smith became the only stockholder. Some time later, Mr. Smith requested approval to give some of his stock to his children.

(6) Joe Brown is in his mid 80's and wants to bring his son into the ownership of his business. The son has been employed in the business as the manager for several years.

(7) John Smith bought all of the outstanding stock in Recreation World, Inc., and then sold the assets to XY Corporation, Inc., another corporation in which Mr. Smith and his family continue to maintain majority stockholdings.

i. SOLICITOR INVOLVEMENT

Concessioners are required to provide to the National Park Service all documents proposed to implement sales and transfers. The buyers and sellers are usually represented throughout the entire transaction by lawyers who draw up the necessary documents. For this reason, it is most important that the Regional Solicitors be consulted on all proposed sales and transfers from the time of the initial request by the concessioners up until the actual improvement.

S A M P L E

ASSIGNMENT, ACCEPTANCE AND APPROVAL DOCUMENT

ASSIGNMENT

For value received, XYZ Company, Inc., a Nevada corporation does hereby assign, and set over, subject to the approval of the Secretary of the Interior, as of _____ (Date) _____ to ABC Company, Inc., a corporation organized under the laws of the State of Arizona all its right, title and interest in and under that certain Concession Contract No. 9900C20000 entered into between the Secretary of the Interior and XYZ Company, Inc., as of _____ (Date) _____ granting the right to operate a concession at the Black Canyon site, Blank National Park.

Executed in quadruple at _____ this _____ day of _____, 19____.

ATTEST: _____ XYZ Company, Inc.

BY _____ BY _____

TITLE _____ TITLE _____

ACCEPTANCE

The undersigned, the Assignee named in the above and foregoing Assignment hereby accepts the same and agrees, subject to the approval of the Secretary of the Interior, to carry out fully and to perform all of the obligations imposed upon said XYZ Company, Inc., by the terms and provisions of the concession contract referred to, from and after the date of approval by the Secretary. The undersigned further agrees to the following conditions:

1. Within 60 days of the date of approval of the Assignment, an audited balance sheet, as of the effective date of the Assignment on which an unqualified opinion has been expressed by an independent licensed or Certified Public Accountant, will be submitted for the approval of the Secretary. This balance sheet must be accompanied by a "Schedule of Assets in which the Concessioner Claims Possessory Interest." The schedule must include the description of the asset, the date initially acquired, depreciation method and life, cost, accumulated depreciation, and net book value.

2. Assets acquired by ABC Company, Inc., from XYZ Company, Inc., will be recorded at an amount which will not exceed fair value. ABC Company, Inc., must provide in detail the basis for valuation including appraisals.

3. To assume all obligations to the National Park Service incurred prior to the effective date of the assignment if XYZ Company, Inc., fails to pay them, including franchise fees, utilities, etc.

4. Within 60 days after approval of the transfer, a copy of an itemized Bill of Sale covering all transferred assets will be provided to the National Park Service.

5. Any debt to be incurred for the purchase or the purchase price paid for the concession will not be used in the future as justification for:

a. A rate increase beyond the point of reasonable comparability pursuant to Section 3(c) of P.L. 89-249.

b. A waiver or reduction of franchise fees.

c. A claim that a reasonable opportunity to realize a profit pursuant to Section 3(b) of P.L. 89-249 is being denied.

ATTEST:

ABC COMPANY, INC.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

APPROVAL

The foregoing Assignment and Acceptance are hereby approved and Concession Contract No. 9900C20000 therein referred to is hereby transferred from XYZ Company, Inc., to ABC Company, Inc., effective as of _____ (Date), subject to the satisfactory performance of the conditions as provided in the Acceptance.

Dated at San Francisco, California, this 20 day of March 19____.

SECRETARY OF THE INTERIOR

BY

Regional Director, Western Region
National Park Service



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

S A M P L E

CONDITIONAL STOCK SALE APPROVAL LETTER

May 25, 19__

Mr. James Smith
XYZ Company, Inc.
New York, New York

Dear Mr. Concessioner:

Your letter of May 2, 19__, to Superintendent Green submitting certain documents and requesting approval of the sale of 100 percent of the stock of XYZ Company, Inc., to ABC Company, Inc., a wholly-owned subsidiary of X Corporation, has been reviewed. In this connection, we are providing the following comments.

1. As requested, this is to advise that XYZ Company, Inc., has operated in a satisfactory manner and has adhered to all terms and conditions of the concession contract, as amended. This should not be construed as relieving XYZ Company, Inc., of payment of its franchise fee for calendar year 19__, and utility charges which may be due, if any, and other monies owing to the United States. Payment of such fees when due and owing is a condition precedent to our approval of the sale of stock. The concession contract, as amended, is still in full force and effect, including our previous approval of the loan agreement dated June 24, 19__, between XYZ Company, Inc., and the First National Bank of New York.

2. In addition, as a result of the bank's expressed concern in the event of default, this is to advise that parties holding an approved mortgage or other instrument of indebtedness on the possessory interest of the concessioner succeed to the possessory interest of the concessioner in concessioner's improvements upon default, all pursuant to Section 13 of the concession contract. Further, termination of the concession contract by the Secretary will result in the purchase of concessioner's possessory interest pursuant to Section 12 of the concession contract.

3. It is our understanding that ABC Company, Inc., will purchase 100 percent of the capital stock thereof.

4. According to the stock purchase agreement, it is our understanding, and a condition of our approval, that the purchaser intends, at least for the time being, to continue the corporate identity of XYZ Company, Inc., and follow the normal procedures whereby the books and records of XYZ Company, Inc., will be continued, and that no revaluation of assets will be involved. If at some point of time in the future the purchaser plans to dissolve the corporation, assign the operation, and revalue the assets to properly reflect the purchase price, it must be understood that our prior approval of the transaction will be required. Furthermore, if such an event should occur, the Service will not recognize any revaluation of possessory interest which is in excess of the fair market or appraised value.

5. In addition, Mr. (Proposed new concessioner's) letter of December 1, 19____, indicates that the purchaser intends to place special emphasis on improved services and increased visitor usage of facilities on a year-round basis as well as future expansion projects.

In this regard, it must be understood that the concession contract, as amended, is still in full force and any proposed building and improvement program by the purchaser beyond the scope of said contract cannot be considered by the Service until such time as the Service has reviewed the proposal(s) pursuant to its usual administrative and environmental protection procedures.

6. Pursuant to Article VII under the Articles of Incorporation of ABC Company, Inc., the term of existence for the corporation is twenty-five (25) years from March 15, 1961. We trust that the renewal provision therein will be exercised as the concession contract runs through December 31, 1998.

7. Our review of the proposed transaction indicates that ABC Company, Inc., through its parent, X Corporation, is financially and managerially competent to operate the XYZ Company, Inc., concession operations subject to the submission of the following:

(1) a resolution of the Board of Directors of X Corporation stating that in consideration of the Secretary's approval of the stock purchase, it will assure that ABC Company, Inc., and XYZ Company, Inc., will receive the financial support needed to conduct all aspects of its operations on a sound basis, both managerially and financially, including, but not limited to a guarantee by X Corporation, Inc., of timely payment of all indebtedness of XYZ Company, Inc., and ABC Company, Inc., (including the indebtedness created by the purchase of XYZ Company, Inc., stock by ABC Company, Inc.): (2) an opinion of counsel of the X Corporation stating that the transaction, including the sale of stock and related agreements submitted to this office (including the Agreement labeled "Exhibit B" to the April 26, 19____, stock purchase agreement) are valid, binding and enforce-

able according to applicable Federal and State laws and that the execution of this letter by the X Corporation, together with passage of the corporate resolution mentioned above, are legally effective and sufficient actions to establish the corporate obligations described in paragraph 7(1) above. In this regard, Assistant General Counsel Smith's letter of January 29, 19__, submitted by the X Corporation did not sufficiently address that issue: (3) execution of this letter by necessary authorized official(s) of the X Corporation in the space provided below which shall attest to the undertaking by that corporation to assure financial and managerial support of ABC Company, Inc., and XYZ Company, Inc., as described in paragraph 7(1) hereof, and agreement to the other conditions and understandings stated herein, all in consideration of the Secretary's approval of the stock purchase discussed above.

8. Within 90 days of the date of acceptance of this letter, ABC Company, Inc., will submit a balance sheet showing its assets, liabilities and equity as of the date of this letter.

9. Any debt to be incurred for the purchase or the purchase price paid for the concession will not be used in the future as justification for:

a. A rate increase beyond the point of reasonable comparability pursuant to Section 3(c) of P.L. 89-249.

b. A waiver or reduction of franchise fees.

c. A claim that a reasonable opportunity to realize a profit pursuant to Section 3(b) of P.L. 89-249 is being denied.

We have provided Mr. (Proposed Concessioner) with a copy of this letter which may be considered as conditional approval of the stock transaction described above. Upon submission of the documents specified above in acceptable form and return of this letter executed by the appropriate authorized officials of the several corporations involved indicating their acceptance of the conditions and understandings stated herein, we will provide our immediate response and/or acceptance of the proposed action in writing.

The three additional copies of the letter are for the use of the corporations indicated below. After all signatures have been obtained, please return the original of this letter and all other documents to this office.

Sincerely yours,

Director

ACCEPTED:

X Corporation

ABC Company, Inc.

By _____

By _____

Title _____

Title _____

Date _____

Date _____

XYZ COMPANY, INC.

By _____

Title _____

Date _____

S A M P L E
STOCK SALE APPROVAL LETTER

June 1, 19____

Mr. John Jones
Vice President
X Corporation
Phoenix, Arizona

Dear Mr. Jones:

This is to acknowledge the receipt of your letter, which you hand delivered on May 28 to this Office, dated May 25, 19____, signed by Mr. James Smith of XYZ Company, Inc., Mr. Paul Brown of ABC Company, Inc., and yourself representing the X Corporation, along with other requested documents. We have completed our review and find them acceptable.

You are hereby notified that the sale of 100% of the stock of XYZ Company, Inc., to ABC Company, Inc., is hereby approved and effective as of June 1, 19____, subject to the conditions set forth in our May 25, 19____, letter agreement referenced above.

We wish you the very best as new owners of the XYZ Company, Inc.

Sincerely yours,

Regional Director
_____ Region

VENDING MACHINES (RANDOLPH-SHEPPARD ACT)

A. LAW

20 U.S.C. 107**§ 107. Operation of vending facilities authorized; preferences regulations; justification for limitation on such operation**

(a) For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and

stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter; and the Secretary, through the Commissioner, shall, after consultation with the Administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of Federal property, prescribe regulations designed to assure that—

(1) the priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 107d-3 of this title to achieve and protect such priority), and

(2) wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

B. REGULATION

43 CFR, Part 13**§ 13.1 Authority and purpose.**

The Randolph-Sheppard Vending Stand Act of June 20, 1936, as amended by section 4 of the Act of August 3, 1954 (68 Stat. 663; 20 U.S.C. 107), directs that, insofar as practicable, preference shall be given to blind persons in the operation of vending stands and machines on any Federal property.

The regulations in this part prescribe the policies and procedures to achieve and protect that preference on property, including land, owned or leased by the United States and controlled by the Department of the Interior.

§ 13.4 Terms of permit.

Every permit shall describe the location of the vending facilities and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency.

(b) The permit shall be for a definite term, not to exceed five years, and shall be without charge for rent.

(c) The permit may be revoked at any time upon not less than 30 days written notice to the permittee from the head of the Interior bureau or office having control of the property where the vending facilities are located. Such notice shall state the reasons on which it is based.

(d) Items sold at the vending facilities shall be limited to newspapers, periodicals, pre-packaged confections, tobacco products, articles dispensed automatically or in containers or wrappings in which they are placed before receipt by the vendor, and such other articles as may be approved by the head of the Interior bureau or office for each location. The head of the Interior bureau or office may require discontinuance of sale of any type of article, upon not less than 15 days' notice in writing.

(e) Vending facilities shall be operated in compliance with such standards of appearance, safety, health, sanitation, and efficiency as may be prescribed by the head of the Interior bureau or office. Such standards shall conform, so far as practicable with the provisions of State laws and regulations, whether or not the property is under the exclusive jurisdiction of the United States.

(f) The permittee shall arrange for the modification or relocation of the vending facilities when in the opinion of the head of the Interior bureau or office such action is essential to the satisfactory maintenance, operation, or use of the property concerned and shall not modify or relocate such facilities without such approval. Installation, modification, relocation, or removal of vending facilities shall be made only under the supervision of the head of the Interior bureau or office and without cost to the Department of the Interior. The permittee may be required to remove any vending device deemed undesirable by the head of the Interior bureau or office. Ownership of vending devices installed by the permittee or operator shall

remain vested with the installer. All extra identifiable costs incurred by the Department of the Interior in restoring to its original condition any space vacated by removal or relocation of vending facilities shall be reimbursed by the permittee or the operator.

(g) In the event a vending facility is being operated in a manner unsatisfactory to the Interior bureau or office, the permittee will be notified in writing and required to take appropriate action to rectify the situation.

(h) The operator of the vending facility shall carry such insurance against losses by fire, public liability, employer's liability, or other hazards as is customary among prudent operators of similar businesses under comparable circumstances.

C. POLICY

Management Policies Manual, Chapter VIII
Vending Machines (Randolph Sheppard Act)

When new concession opportunities for the operation of vending facilities become available, NPS is authorized and required to give priority in the award of the contracts or permits to licensed blind vendors.

D. RESPONSIBILITIES

See above regulations.

E. PROCEDURES

When issuing a contract or permit for the operation of vending facilities to a blind vendor, priority in the award of the contract/permit can be given by simply "sole sourcing" the contract or permit with a licensed blind vendor. This means that a prospectus need not be issued; however, public notice is still required. At the expiration of the contract/permit, the contract/permit can be renewed without the issuance of a fact sheet but public notice of the Service's intention to renew must be published in the "Federal Register".

The applicability of the Randolph-Sheppard Act amendments to NPS concession contracts and permits is limited by the Health and Human Service's (HHS) regulations. Essentially, as described in HHS's preamble to the regulations, priority to licensed blind vendors need only be given when the concession opportunity to be authorized is "solely for the operation of a facility similar to those generally operated under the Randolph-Sheppard program."

The regulations do not apply to concessions which offer a range of facilities and services broader than the usual Randolph-Sheppard facility nor when a single concessioner is given authority to operate all concession facilities in a given park. In addition, we do not consider that priority for blind vendors may be given in contravention of an existing satisfactory concessioner's preferential right to renewal.

Application for a permit shall be made, in writing, by the State licensing agency designated by the Department of Health and Human Services, to the Superintendent of the park. In considering applications for permits, Superintendents shall give due regard to the terms of any existing contractual arrangements with concessioners, as is required by the regulations.

Permits to be granted to blind persons shall be issued in the name of the State licensing agency and printed Form 10-112 (Rev. 7-81) should be used for this purpose.

COMMERCIAL USE LICENSE (CUL)

A. GENERAL

The Commercial Use License (CUL) comes under the authority of CFR Title 36, Chapter 1, Section 5.3. It does not come within the purview of P.L. 89-249.

The CUL is a simple, uncomplicated document for use by the Superintendents to authorize commercial activities in park areas which are provided by commercial operators who initiate and terminate their operations outside of park boundaries and conduct no aspects of business within the boundaries of a park. It is necessary for the Superintendent to know who provides services within the parks and the extent of their operations to properly control commercial activities pursuant to the above referenced regulation. (See Chapter 5 of this guideline for Section 5.3.)

B. CRITERIA FOR USE

To utilize the CUL rather than a concession authorization, the following criteria, without exception, must be met:

1. Activities authorized must be appropriate to the preservation of the park (resource protection, visitor protection, and interpretation).
2. The number of licensees must not be limited, and there must be no intent to limit the number. A limited area of a park can be assigned for a specific activity, but the number of licenses issued for the activity cannot be limited.
3. The services provided must originate and terminate outside of the park; and all aspects of business, i.e., advertisement, exchange of money, etc., must take place outside of the park.
4. The rates of the licensee are not approved by the National Park Service.
5. Licensee has none of the rights or privileges of P.L. 89-249.
6. The license may not be used for activities that are appropriately authorized by Special Use Permit, such as agricultural uses.
7. Licensee will not be allowed to construct any temporary or permanent structure(s) in the park and will not be assigned any buildings, or portions thereof, located in the park, except as allowed to the general public.
8. The services provided must not conflict with the preferential rights provided under any concession contract(s).

9. The operator must be duly licensed by State or local authorities, where applicable, to conduct business within the State or territory in which the park area is located.

The above criteria have been incorporated as provisions of the license to assure that the CUL does not come under the purview of P.L. 89-249.

C. OTHER PROVISIONS OF THE CUL

1. Term. The term of the CUL may not exceed 2 years. It may be for any period of lesser term.

2. Payment. The CUL requires an administrative preparation payment, paid in advance, of \$50, or as determined, notwithstanding the term of the license, i.e., whether the term be for 1 day or 2 years. Other identifiable administrative or management costs incurred by the park above and beyond the \$50 fee should be charged to the licensee to recover such cost to the fullest extent possible. Management costs would include those incurred by the park staff in monitoring (overseeing) the CUL operations to assure compliance with operational and safety requirements (identified in an attachment to the license) or excessive preparation costs. A fee of less than \$50 needs to be fully justified.

3. Indemnification. The minimum insurance requirements established for concession authorizations apply. (See Chapter 23 of this Guideline.)

4. Nondiscrimination. Licensees and their employees shall not discriminate against any individual because of race, creed, color, religion, sex, age, national origin, or physical or mental handicap.

Licensees should have affirmative action programs, if applicable, to assure equal employment opportunities and should adhere to the Department's labor standards and to applicable Federal and State labor laws.

5. Assignment. The CUL may not be transferred, extended or assigned under any circumstances.

6. Revocation. The CUL may be revoked at any time at the discretion of the Superintendent without compensation to the licensee or liability to the United States.

7. Annual Report. At the discretion of the Superintendent, the licensee may be required to submit an annual report which summarizes visitor use and/or includes gross revenues for the year.

8. Soil Erosion. At the direction and approval of the Superintendent, the licensee will take adequate measures to restrict and prevent soil erosion on

the lands covered by the license and will not contribute to erosion on adjoining lands.

A copy of the revised Commercial Use License is attached to this Chapter as Exhibit 1.

NATIONAL PARK SERVICE
COMMERCIAL USE LICENSE

(AREA)

In accordance with National Park Service regulations as contained in Title 36, CFR Chapter 1, Section 5.3, permission is granted to _____ of (Complete Address) _____

to conduct the following commercial activities in the above-named area (or specified portion thereof): _____

_____ for a period of _____ from _____ through _____, but not to exceed two (2) years, subject to payment in advance to the Government of the United States * _____ DOLLARS (\$ _____), for processing this license and _____ DOLLARS (\$ _____), for monitoring (overviewing) the operational and safety requirements stipulated in Attachment " _____ " to this license, for a total amount of _____ DOLLARS (\$ _____).

The license is granted subject to the following conditions:

1. The licensee and all participants authorized herein must comply with all of the conditions of this license and with all directions of the Park Superintendent. The licensee must have obtained all permits or licenses of State or local governments, as applicable, necessary to conduct the commercial activities specified above and must operate in compliance with all pertinent Federal, State, and local laws and regulations.

2. The area(s) authorized for use under this license must be left in substantially the same condition as it was prior to the activities authorized herein, and all refuse shall be placed in the trash containers provided, or disposed of as otherwise required by the Superintendent. The licensee shall be liable for any damages to property of the United States resulting from the activities authorized hereunder.

* See Page 2, paragraph C.2 of this Chapter.

3. This license is applicable only for the use of the area(s) and term designated above.

4. It is expressly agreed and understood that this license does not authorize the licensee to advertise, solicit business, collect any fees, or sell any goods or services on lands owned and controlled by the United States.

5. Indemnification. The licensee shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages, or claims for personal injury, death, or property damage of any nature whatsoever and by whomever made, arising out of the activities of the licensee, its employees or agents under the license.

6. Nondiscrimination. See Attachment "A".

7. Construction. No building, or other structures will be erected under this license within (name of park).

8. Assignment. This license may not be transferred, extended or assigned under any circumstances.

9. Revocation. It is expressly understood and agreed that this license may be revoked at any time at the discretion of the Superintendent without compensation to the licensee or liability to the United States.

10. General Provisions. (a) Operations under this license shall be subject to the laws of Congress governing the area and rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated; provided, however, that this license does not constitute a concession contract or permit within the meaning of 16 U.S.C. 20 et seq., and, specifically, that no preferential right of renewal attaches to this license.

(b) Reference in this license to "Superintendent" shall mean the Service official executing this license and the term shall include his/her duly authorized representatives, and reference to "Service" herein shall mean the National Park Service.

(c) No member of, or delegate to, Congress shall be admitted to any share or part of this license or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this license if made with a corporation or company for its general benefit.

(d) The licensee (is)(is not) required by the Superintendent to submit annually, but not later than THIRTY (30) DAYS after _____, an annual report which summarizes visitor use; the licensee (is)(is not) required to include gross revenues for the year in the report.

(e) The licensee is subject to any and all special conditions (if any) attached hereto.

11. Soil Erosion. The licensee shall take adequate measures, as directed and approved by the Superintendent, to restrict and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

12. Non-Exclusive Authorization. This license shall not be construed as limiting the obligation of the Superintendent to issue similar licenses at the request of all other persons seeking to conduct the same or similar activities in the area.

Dated at _____ this _____
day of _____, 19____.

(LICENSEE)

(SUPERINTENDENT)

(NAME OF PARK)

By _____

TITLE _____

EXHIBIT "A"

CONCESSION
AUTHORIZATION NO.:

NONDISCRIMINATION

SECTION I
REQUIREMENTS RELATING TO EMPLOYMENT
AND
SERVICE TO THE PUBLIC

A. EMPLOYMENT: During the performance of this concession contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates

gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated

September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II

ACCESSIBILITY

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the ser-

vice or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U. S. Postal Service.

PART A

DISCRIMINATION PROHIBITED

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.

PART B

EXISTING FACILITIES

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

COOPERATING ASSOCIATIONS

[TO BE PUBLISHED AT A LATER DATE]

HOSTELS

A. GENERAL

Youth hostel operations fall within the scope of the Concessions Policy Act, P.L. 89-249, and should be conducted in accordance with procedures consistent with that Act, viz., rate approval, evaluations, etc. As a general rule, Concession Park Hostel Concession Permits will be the most frequently utilized authorization in this type of operation, although hostel (concession) contracts could conceivably be employed. In any case, either authorization may be tailored to accommodate the needs of the hostel program. In this regard, please refer to NPS-30 (Hostel Planning and Management), Exhibit B, page 1, et. al., dated May 20, 1980, for the present form of the Park Hostel Concession Permit.

Prior to the release of NPS-30 certain hostel operations were authorized under Special Use Permits. However, any current hostel operations authorized under "Special Use Permits" should, upon expiration, be treated as a new concession operation. Instead of issuing a prospectus, the Solicitor's Office advises that an existing hostel operator under a Special Use Permit can be sole sourced, pursuant to 36 CFR §51.4f, without public notice when it is converted to a Park Hostel Permit or a regular Concession Permit.

If it is considered necessary and appropriate to have a hostel operation in a given park where there is already a concessioner authorized to provide "overnight accommodations or lodging", and that concessioner enjoys a preferential right to new or additional services, then the Service must give the existing concessioner the right to provide the proposed hostel operation. However, if the existing concessioner waives its right to operate the hostel operation, the Service should then issue a prospectus. Keep in mind any environmental issues which may preclude the addition of such activities.

B. RATES

Since hostel operations fall within the purview of the Concessions Policy Act, rates must be approved by the National Park Service. For additional information on rates pertaining to hostel concession authorizations, please refer to Chapter 18, paragraph E. of this Guideline and Exhibit B, page 2 of NPS-30.

C. PLANNING AND FUNDING OF HOSTEL OPERATIONS

Pursuant to NPS 30, any Hostel Management Plan must be approved by the Regional Director. However, the Superintendent must determine whether a hostel proposal merits getting to that stage or not, including any funding considerations. In addition, Chapter 3, page 2 under the caption "Capital Improvements by National Park Service" states, "The National Park Service may, within the

limits of the Superintendents' spending and construction authorities, initiate major building renovations, providing the park Superintendent deems the improvements necessary." Simply put, the Superintendent is in the driver's seat with respect to limiting hostel operations. If he determines that a proposed hostel is necessary and appropriate, but it requires NPS funding which may be unavailable, then he either approves or disapproves it, or places it in a holding pattern until funds are available. Hostels should be self-supporting to the extent possible, but that may not always be the case.

D. TERM

If it were necessary for a hostel operation to have a longer term than a 5-year permit in order to obtain grant monies and amortize any investment, a concession contract tailored for a hostel operation would be the proper vehicle. While it is not a legal requirement to confine concession (hostel) permits to a 5-year term, it is a NPS policy to do so. Therefore, the integrity of that policy will remain in tact.

E. VENDING MACHINES

Because of the type of service that a hostel provides, there may be cases when on-site vending machines would be necessary for the convenience of the visitor. Vending machine services could be authorized as a special condition to the hostel permit at the discretion of the Superintendent and/or Regional Director if it were determined that such services are necessary. Again, the preference for a service other than the hostel should be offered to existing concessioners before allowing any encroachment in services already in existence.

For more particular information with respect to provisions of the Park Hostel Concession Permit, you should refer to the Index in NPS-30 and the attached memorandum (Exhibit 1) from the Deputy Director to all Regional Office Directors dated January 7, 1983.

One copy of Park Hostel Concession Permits should be transmitted to the Regional Office and one copy should be transmitted to WASO for record purposes.



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

C3823-680

JAN 7 1983

Memorandum

To: All Regional Directors and Denver Service Center

From: DEPUTY Director

Subject: Hostel Planning and Management, NPS-30

In his memorandum of August 23, 1982, the Acting Regional Director, Western Region, requested that we clarify the policy position of the National Park Service with respect to the authorization and procedures to be utilized for hostel operations within the National Park System. We are enclosing a copy of that memorandum for your reference as our responses herein follow the questions in numerical order as raised by the Western Region.

1. On the basis of information provided by memorandum dated April 5, 1978, (copy enclosed), and during recent telephonic conversations, it is the opinion of the Solicitor's Office, and one in which we concur, that youth hostel operations fall within the purview of the Concession Policy Act of 1965, 16 U.S.C. 20. Therefore, any current hostel operations authorized under "Special Use Permits" should, upon expiration, be treated as a new concession opportunity. However, instead of issuing a prospectus, we are advised that an existing hostel operator under a special use permit can be sole sourced, pursuant to 36 CFR 51.4f, without public notice when it is converted to concession hostel permit or a regular concession permit.
2. If it is considered necessary and appropriate to have a hostel operation in a given park where there is already a concessioner authorized to provide "overnight accommodations or lodging", and that concessioner enjoys a preferential right to new or additional services, then the Service must give the existing concessioner the right of first refusal to provide the proposed hostel operation. However; if the existing concessioner waives its right to operate the hostel operation the Service should then issue a prospectus. Keep in mind any environmental issues which may preclude the addition of such activities.
3. and 4. Since hostel operations fall within the purview of the Concessions Policy Act, rates must be approved by the National Park Service.

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In discussions with American Youth Hostels, Incorporated (AYH), we learned that the organization directly operates about 40 hostels and approximately 240 independent operations that are affiliated with AYH. Maximum rates are set by AYH based on the four types of operations listed below:

<u>TYPE</u>	<u>*Maximum Rates</u>	
	<u>SUMMER</u>	<u>WINTER</u>
Shelter	\$ 3.25	\$ 4.00
Simple	4.25	5.25
Standard	5.25	6.50
Superior	6.25	7.75

* Includes .25¢ for AYH development fund.

AYH operators may charge lower rates but are not permitted to go above the stated maximum.

The primary difference between the four types of hostels is basically size and other amenities. All AYH hostels are required to have a kitchen, eating area, lounge and separate sleeping areas and baths for men and women.

In addition to the above types of hostel accommodations, there is another type known as a "Supplemental" accommodation that may be affiliated with AYH. This type usually lacks one of the basic requirements as stated above, are located where there is a demand, and are housed in a building serving another purpose (typically a hotel). While the rates for those accommodations are not set by AYH they must be low rates that are approved by it in order to maintain affiliation with AYH.

Overall, rates for other than the supplemental type of accommodations are established on the basis of minimal financial requirements (i.e., AYH is generally non-profit) taking into account donated funds, development costs, maintenance and other operating expenses.

The size of the AYH operation (280 units) and their standard rate structure provides an excellent basis for rate comparability. Their low maximum rates are considered most reasonable. However, due to the fact that AYH receives donations and the operations are generally non-profit businesses, their rates cannot always be fully applied to other operations. Therefore, AYH rates may be used as comparables and the rates for other operators should be adjusted upward or downward, on a case-by-case basis, taking into account donations received, services that NPS may provide (viz buildings, capital improvements, etc.), and amenities provided.

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However, AYH ~~is~~ not the only operator nationwide and therefore we need to seek ~~them~~ out for additional rate comparability.

5. Because of the nature of the type of service that a hostel provides, there undoubtedly would be cases when on-site vending machines would be necessary for the convenience of the visitor. Vending machine services could be authorized as a special condition to the hostel permit at the discretion of the Superintendent and/or Regional Director, if it were determined that such services are necessary. However, remember that the preference for a service other than the hostel should be offered to existing concessioners before allowing any encroachment in services already in existence.

6. If it were necessary for a hostel operation to have a longer term than a 5 year permit in order to obtain grant monies and amortize any investment, a concession contract tailored for a hostel operation would be the proper vehicle. While it is not a legal requirement to confine concession (hostel) permits to a 5 year term, it is a NPS policy to do so. Therefore, the integrity of that policy will remain in tact.

7. You have expressed concern about the extent of funding for which the Service may be responsible as stated in NPS 30 and feel that the facilities should be self-supporting without NPS funding support.

Pursuant to NPS 30, any Hostel Management Plan must be approved by the Regional Director. However, Superintendents must determine whether a hostel proposal merits getting to that stage or not, including any funding considerations. In addition, Chapter 3 Page 2 under the caption "Capital Improvements by National Park Service" states "The National Park Service may, within the limits of the Superintendents' spending and construction authorities, initiate major building renovations, providing the park Superintendent deems the improvements necessary." Simply put, the Superintendent is in the drivers seat with respect to limiting hostel operations. If he determines that a proposed hostel is necessary and appropriate, but it requires NPS funding which may be unavailable, then he either approves or disapproves it, or places it in a holding pattern until funds are available. Hostels should be self supporting to the extent possible but that may not always be the case.

The last paragraph of your memorandum states that AYH, Inc., offers advantages exclusively to its members viz., discount on rooms and preference on reservations. You feel that this practice conflicts with the Service's Management Policies of "first come first served" without preferences and should be discontinued by AYH, Inc., in national parks.

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Your position on this matter is correct, and it is also reinforced by Section 6 of the Park Hostel Concession Permit found in Exhibit B, Page 2 of NPS-30 which states in part "Concessionaire shall not discriminate in rates charged to any member of the general public and shall not require membership in any organization for the use of the services and facilities at the concession operation." In order to remedy any conflicts with this policy, all regions are to notify hostel operators in your regions that they must immediately comply with this policy.

In addition to the foregoing, please provide this office with a current listing of each hostel operation in your respective regions, including any applicable hostel publications that may be available, and advise us when subsequent hostels begin operations.

We trust that we have sufficiently answered your questions, but should you need further clarification on this matter please do not hesitate to bring it to our attention.

Wm J. Hutchinson

Enclosure



United States Department of the Interior

NATIONAL PARK SERVICE

WESTERN REGION

450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94103

IN REPLY REFER TO:

L30(WR-00)

August 23, 1982

Memorandum

To: Director, National Park Service

From: ^{ACTING} Regional Director, Western Region

Subject: Hostel Planning and Management, NPS-30

The subject guideline was issued May 20, 1980. Since its issue we have been wrestling with several areas that were not addressed. We wish to request additional policy clarification in the following areas:

1. Most of our existing hostel operations were authorized prior to NPS-30 under Special Use Permits and issued directly to an operator without public advertising. Upon renewal of the existing authorization, are these considered "concessions" and thusly subject to the preferential rights granted under the Concessions Act, or shall we now consider each renewal authorization a "new" concessions permit with no preferential right to renewal?
2. If we are considering a new hostel operation in a park in which an existing concessioner has a preferential right to "overnight accommodations or lodging", does that concessioner have the preferential right to the hostel operation?
3. Hostels are most often non-profit organizations that obtain various Government grants and NPS programmed funds to improve and operate the Government facility utilized by the hostel organization. If we are dealing with a concessioner that may not have access to such grants or funds, how do we deal with variations in the operational costs, capital investment, depreciation, amortization, (et al) vis-a-vis visitor rates?
4. If hostel operations are "concessions" as stated in NPS-30, rate approval is required. American Youth Hostel (A.Y.H.) operates the greatest number of hostels by far and may be a successful offeror to a Statement of Requirements prospectus. As most "comparables" are A.Y.H., it would appear to be a conflict of interest to utilize their own operations as comparables. Has a reasonable option (Comparability Program Method) been considered or proposed?
5. By the very nature of the type of facility, we are finding increasing encroachment into the normal attendant visitor services. These include coin-operated laundries, vending machines for a variety of both food and drinks, and a sales outlet for various publications.

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6. A.Y.H. has disagreed with the issuance of the concessions permit as the term is limited to five (5) years. They claim that to obtain grant monies and amortize their investment, longer term authorization is needed. May a longer term permit be utilized under these circumstances?

7. In these days of critical funding, we are concerned about the extent of funding for which the Service may be responsible as stated in NPS-30. Although we are highly supportive of the objectives of hosteling, we feel that the facilities should be self-supporting without NPS funding support.

An additional issue is that A.Y.H., Inc. offers advantages exclusively to its members that conflict with the Service's Management Policies of "first come - first served" without preferences. Another hostel organization has objected strenuously to these privileges being offered in a national park as their members are recruited away as they register by A.Y.H. informing them in effect, "If you were a member of A.Y.H., Inc., you would have received a (1) discount on the room, and (2) preference on the reservation . . ." We feel both (1) and (2) are a violation of NPS policies and should be discontinued by A.Y.H., Inc. in our national parks.

Levi E. Lopez

cc:
Chiefs, Divisions of Concessions Management, MAR, MWR, NCR, NAR, PNR, RMR,
SER, SWR, and Alaska Region



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

WASHINGTON D.C. 20240

APR 5 1978

Memorandum

To: Director, National Park Service

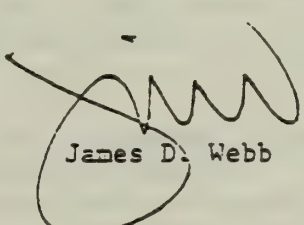
From: Associate Solicitor, Conservation and Wildlife

Subject: Youth Hostels

This is to clarify the position of the Solicitor's Office with respect to the authorization and procedures to be utilized for hostel operations within the National Park System, in order that your policy discussion may focus on legally viable options.

On the basis of information provided by the Service to this office, it would be our view that youth hostel operations fall within the scope of the Concessions Policy Act of 1965, 16 U.S.C. 20, and that operations should be conducted in accord with procedures consistent with that Act (although tailored to accommodate the needs of the hostel program). We do not consider special use permits as the basis to handle these matters because of the existing concession authorizations. See enclosed opinion of December 1, 1977, which properly addresses this matter.

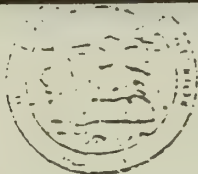
In order to assist in your deliberation Mr. Manslin of our office will attend the policy meeting, and we look forward to reviewing your policy once prepared.



James D. Webb

Enclosure

cc: Asst. Dir. Special Services
Chief Div. of Policy, NPS
Asst. Sol. P&R(Watts)
Asst. Sol. Natl. Cap. Parks(Robbins)
All Regional Solicitors



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20460

1 DEC 1977

IN REPLY REFER TO:

Memorandum

To: Superintendent, C&O Canal National Historical Park
National Capital Region, National Park Service

From: Assistant Solicitor, National Capital Parks

Subject: Propsoed Falling Waters Hostel on C&O Canal National Historical Park

In your memorandum dated September 27, 1977, you requestd our concurrence and approval in the issuance of a special use permit for the proposed Falling Waters Youth Hostel.

We cannot concur for two reasons 1) The hostel should be a concession. Therefore, the procedures provided in 16 U.S.C. §20 et seq. rather than the special use permit procedures must be observed. 2) The proposed fifty cents rate differential between members and non-members of the hostel association is contrary to the duty of concessioners to serve the general public in a non-discriminatory manner.

The Concessions Act of 1965 (16 U.S.. §20 et seq.) provides guidelines for the strict control of businesses in the National Parks. If a proposed activity is actually a concession, mere compliance with special use procedures is insufficient. The hostel is clearly within the scope of the Concession Act which regulates "public accommodations, facilities and services". 16 U.S.C. §20.

The proposed agreement calls for a self-sustaining farm and interpretive program. The farm does not constitute a busines subject to the Concessions Act and should be the subject of a separate coopreative agreement pursuant to 16 U.S.C. 1a-2(g).

The concession statute limits development and business in the parks to those "necessary and appropriate for public use and enjoyment". 16 U.S.C. §20 (emphasis added).

We believe that "public use" means use by the general public on a non-discriminatory basis. Although the rate differential in this case is a small one and represents an established practice among youth hostels, we

cannot ignore it. If we accept the principal of special rates for members of an organization, we will repeatedly be faced with the difficult determination of when a differential is exorbitant or otherwise unacceptable. A discriminatory rate structure may lead to demands for additional privileges for members of various clubs.

Hostels do exist in other National Parks. We are informed by the San Francisco field solicitor that the American Youth Hostel Association agreed to a non-discriminatory rate structure for the hostel at Fort Mason. We believe that a similar agreement can and should be reached for the Falling Waters Hostel.

If we can be of any further assistance in this matter, please contact Bruce Landon of our office at 343-9428.

(Sgd.) Richard G. Robbins

Richard C. Robbins
Assistant Solicitor
National Capital Parks

HANDICAPPED ACCESS

A. LAW

1. The Architectural Barriers Act of 1968

Any building, built, or renovated in whole or in part with Federal funds or on behalf of the Federal Government, shall be accessible to and usable by physically handicapped persons.

2. Rehabilitation Act of 1973, Title V

Sec. 504. No otherwise qualified handicapped individual in the United States; as defined in section 7(7), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by any Executive agency or by the United States Postal Service.

B. REGULATIONS

1. 36 CFR 1190 - Minimum Guidelines and Requirements for Accessible Design

Subpart A—General

§ 1190.1 Purpose.

The purpose of this part is to implement Section 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended, which requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for standards issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), as amended. This part and the standards to be based on it are intended to ensure that certain buildings and facilities financed with Federal funds are designed, constructed, or altered so as to be readily accessible to, and usable by, physically handicapped persons.

§ 1190.2 Applicability: Building and facilities subject to guidelines and standards

(a) *Definitions.* As used in this section, the term:

(1) "Constructed or altered on behalf of the United States" means constructed or altered for purchase by the United States, or constructed or altered for the use of the United States.

(2) "Primarily for use by able-bodied military personnel" means expected to be occupied, used, or visited principally by military service personnel. Examples of buildings so intended are barracks, officers' quarters, and closed messes.

(3) "Privately owned residential structures" means a single or multi-family dwelling not owned by a unit or subunit of Federal, state, or local government.

(b) *Buildings and facilities covered.* Except as provided in paragraph (c) of this section, the standards to be issued by the standard-setting agencies in conformance with these minimum guidelines and requirements apply as provided in paragraph (d) of this section to any building or facility—

(1) The intended use for which either—

(i) Will require that such building or facility be accessible to the public, or

(ii) May result in employment or residence therein of physically handicapped persons; and

(2) Which is—

(i) To be constructed or altered by or on behalf of the United States;

(ii) To be leased in whole or in part by the United States after August 12, 1968, and before January 1, 1977, after construction or alteration in accordance with plans and specifications of the United States;

(iii) To be leased in whole or in part by the United States on or after January 1, 1977;

(iv) To be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or alteration issued under the law authorizing the grant or loan; or

(v) To be constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(c) *Buildings and facilities not covered.* The guidelines and requirements and the standards do not apply to—

(1) Any privately owned residential structure, unless it is leased by the Federal government on or after January 1, 1977, for subsidized housing programs; or

(2) Any building or facility on a military installation designed and constructed primarily for use by able-bodied military personnel.

(d) *Application and effective date of standards.* Any covered building or facility, as provided in this section, which is designed, constructed, or altered after the effective date of a standard issued in conformance with this guideline which is applicable to the building or facility, shall be designed, constructed, or altered in accordance with the standard. Any other building or facility covered by the Architectural Barriers Act, if and when required by law, shall comply with such standards issued in conformance with this part as are appropriate.

(e) *Special building and facility types and elements.* Subpart E is reserved for the development of minimum guidelines and requirements for special building and facility types and elements. This includes housing, subject to standards issued by the Department of Housing and Urban Development (HUD), to which the minimum guidelines and requirements in Subpart C and D do not apply. Pending the development of Subpart E, no HUD standards under the Architectural Barriers Act shall provide for less accessibility than is provided in HUD's current minimum property standards and 24 CFR Part 40 (1981).

§ 1190.3 Definitions.

As used in this part, the term:

"ATBCB" means the Architectural and Transportation Barriers Compliance Board.

"Access aisle" means a pedestrian space between elements such as parking spaces, seating, and desks.

"Accessible" means in compliance with the specifications and requirements of any applicable standard issued by a standard-setting agency in conformance with this part. "Accessible" describes a site, building, facility, or portion thereof that complies with these requirements, and that can be approached, entered, and used by physically handicapped persons. Accessible elements and spaces of a

building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility and complying with the space and reach requirements of any standard issued by a standard-setting agency in conformance with this part. (Interior accessible routes may include but are not limited to corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include but are not limited to parking access aisles, curb ramps, walks, ramps, and lifts.)

"Accessible space" means a space that complies with any standard issued by a standard-setting agency in conformance with this part.

"Adaptability" means the ability of certain building spaces and elements such as toilet facilities and grab bars, to be added to, raised, lowered, or otherwise altered so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability.

"Addition" means an expansion, extension, or increase in the gross floor area of a building or facility.

"Agency" means a Federal department, agency or instrumentality, as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an official authorized to represent an agency.

"Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance,

reroofing, interior decoration, or changes to mechanical systems.

"Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

"Assembly area" means a room or space accommodating fifty or more individuals for religious, recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink, and including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference and meeting rooms accommodating fewer than fifty individuals are not considered assembly areas.

"Automatic door" means a door—

- (1) Used for human passage and
- (2) Equipped with a power-operated mechanism and controls that open and close the door upon receipt of a momentary actuating signal.

"Building" or "facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

"Circulation path" means an exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

"Clear" means unobstructed.

"Common use areas" means those interior and exterior spaces available for use by all occupants and users of a building or facility, exclusive of any spaces that are made available for the use of a restricted group of people or the use of which is restricted to particular functions.

"Construction" means any erection of a new building or of an addition to an existing building or facility.

"Cross slope" means the slope that is perpendicular to the direction of travel (see "running slope").

"Curb ramp" means a short ramp cutting through a curb or built up to it.

"Egress" or "means of egress" means a continuous and unobstructed way of exit travel from any point in a building or facility to an exterior walk or out of a fire zone. It includes all intervening rooms, spaces, or elements.

"Element" means an architectural or mechanical component of a building, facility, space, or site; e.g., telephone, curb ramp, door, drinking fountain, seating, water closet.

"Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s). The principal entrance of a building or facility is the main door through which most people enter.

"Essential features" means those elements and spaces that make a building or facility usable by, or serve the needs of, its occupants or users. Essential features include but are not limited to entrances, toilet rooms, and accessible routes. Essential features do not include those spaces that house the major activities for which the building or facility is intended, such as classrooms and offices.

"Exception" means a special provision in this part or in a standard which indicates an acceptable alternative, under specified circumstances, to a requirement stated directly above the exception.

"Extraordinary repair" means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

"Full and fair cash value" is calculated for the estimated date on which work will commence on a project and means—

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation (Note: The one hundred percent (100%) equalized assessed value shall be based upon the state's most recent determination of the particular city's or town's assessment ratio. Example: Town X has an assessment ratio of forty percent (40%), and the particular building in question is assessed at \$200,000.00. To determine the equalized assessed value of this building, divide \$200,000.00 by .40, and

the equalized assessed value equals \$500,000.00.);

(2) The replacement cost; or

(3) The fair market value.

"Guidelines and requirements" means this part.

"Operable part" means a part of equipment or an appliance used to insert or withdraw objects, to activate or deactivate equipment, or to adjust the equipment (e.g., coin slot, push button, handle).

"Physically handicapped person" means any person who has a disability which substantially limits one or more major life activity, including but not limited to such functions as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Physically handicapped persons include those having the inability to walk, difficulty walking, reliance on walking aids, sight and hearing disabilities, incoordination, reaching and manipulation disabilities, lack of stamina, difficulty interpreting and reacting to sensory information, and extremes in physical size.

"Power-assisted door" means a door—

(1) Used for human passage; and

(2) With a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

"Public use" means any interior and exterior rooms or spaces made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

"Ramp" means a walking surface that has a running slope greater than 1:20.

"Reconstruction" means the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

"Restoration" means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later works or by replacement of missing earlier work.

"Running slope" means the slope that is parallel to the direction of travel (see "cross slope").

"Section 502 of the Rehabilitation Act" or "Section 502" means Section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

"Shall" denotes a mandatory requirement.

"Signage" means the display of written, symbolic, tactile, or pictorial information.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

"Site improvements" means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and similar site additions.

"Space" means a definable area, *e.g.*, toilet room, hall, assembly area, parking area, entrance, storage room, alcove, courtyard, or lobby.

"Standard" means any standard for accessibility issued under the Architectural Barriers Act.

"Standard-setting agency" means one of the four agencies required to issue standards under the Architectural Barriers Act, *i.e.*, the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service.

"Structural impracticability" means having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved.

"Tactile" means perceptible through the sense of touch.

"Tactile warning" means a surface texture applied to or built into walking surfaces or other elements to warn visually impaired persons of hazards in the path of travel.

"Temporary" means elements are not permanent (*i.e.*, installed for less than six months) and are not required for safety reasons.

"Walk" means an exterior pathway or space with a prepared surface intended for pedestrian use and having a slope of 1:20 or less. It includes general pedestrian areas such as plazas and courts.

2. 43 CRF 17 - Nondiscrimination on the Basis of Handicap - Subpart B

These regulations govern federally assisted programs. Regulations governing federally conducted programs are in preparation at Department of Interior. The Department has stated that the substantive non-discrimination obligations for federally conducted programs are identical for the most part to those established for programs receiving federal financial assistance. The following will therefore be considered to apply currently and after publication of the new regulations.

§ 17.203 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aids, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result of level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities, a recipient may not deny a qualified handicapped person the opportunity to participate in all programs or activities covered by this subpart that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have

the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or services provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance for the period during which the facility is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(7) Nothing in this section is to be construed as affecting the acquisition of historic sites or wilderness areas.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 17.217 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesigning of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alterations of existing facilities and construction of new facilities in conformance with the requirements of § 17.218, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small recipients.* If a recipient with fewer than fifteen employees that provides services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services whose facilities are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this subpart except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the effective date of this subpart. New recipients receiving Federal financial assistance shall comply with the requirement of paragraph (a) of this section, except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the date of approval of the application.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section a recipient shall develop, within one year of the effective date of this subpart, a transition plan setting forth the steps necessary to complete such changes. New recipients, receiving financial assistance after the effective date of this regulation, shall develop a transition plan within one year of receipt of the financial assistance. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible and usable;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to insure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 17.270 Recreation programs.

This section applies to recreation programs that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

(a) *Accessibility in existing recreation facilities.* In the case of existing recreation facilities, accessibility of programs or activities shall mean accessibility of programs or activities when viewed in their entirety as provided at § 17.217. When it is not reasonable to alter natural and physical features, the following other methods of achieving accessibility may include, but are not limited to:

(1) Reassigning programs to accessible locations.

(2) Delivering programs or activities at alternate accessible sites operated by or available for such use by the recipient.

(3) Assignments of aides to beneficiaries.

(4) Construction of new facilities in conformance with the requirements of § 17.218.

(5) Other methods that result in making the program or activity accessible to handicapped persons.

C. POLICIES

1. Management Policies Manual, Chapter VIII Accessibility For Disabled Persons In Concession Operations

Within the parks and in the promotional material distributed publicly, concessioners share the Service's responsibility to provide access insofar as it pertains to the facilities and services they provide, recognizing the constraint of existing contracts and agreements. It is Service policy that, where contracts have some years to run, the National Park Service will strongly encourage concessioners or other contractors to

voluntarily make gradual progress toward an agreed upon level of accessibility, and when new contracts are negotiated, those requirements and a schedule for achieving them will be included in the new agreement.

This policy is based upon the commitment of the National Park Service to provide access in our programs and facilities to the broad cross section of the visiting public. It is also developed to assure compliance with the intent of P.L. 90-480, the Architectural Barriers Act of 1968, and Title V of P.L. 93-112, the Rehabilitation Act of 1973, as amended in 1978.

Basic Principles

This policy has been established to recognize and adhere to the following basic principles:

- Disabled people are members of the visitor group at large, and the National Park Service will provide for their access to existing facilities and programs, to the highest degree feasible and possible. Special, separate or alternative facilities and programs will be provided only when access to existing facilities and programs cannot reasonably be accomplished. Special assistance shall be handled discreetly so as not to draw undue attention.
- The determination of what is feasible and possible will be made with careful consideration of existing obligations to preserve and protect the historic and natural resources that we manage.

Application of Policy to Specific National Park Service Operations

As indicated in the policy statement and as supported by the two legal mandates, accessibility for disabled persons will be provided in both facilities and programs. This means that every reasonable attempt will be made to enable disabled persons to get into our buildings and facilities, and once there to receive the same benefits, services, and information provided to all visitors. (See policies related to specific National Park Service Functions under Park Planning, Park Facilities, Use of the Park and Concessions Management.)

Policy Implementation

This policy promotes the philosophy that, while maximum accessibility is the goal, partial accessibility is better

than none and that improvements should be taken in an orderly and priority-conscious manner. Access problems in both programs and facilities should be identified by each park unit in collaboration with qualified persons and listed in priority order. That list should then be reviewed and updated annually. Actions should be taken at the earliest practicable time to remedy the problems utilizing available funds or other sources whenever possible. Items requiring large expenditures of funds should be identified and considered in setting regional and national funding priorities.

2. Special Directive 83-3 - Policies On Accessibility Related To Specific National Park Service Functions

a. PARK PLANNING FOR ACCESSIBILITY FOR DISABLED PERSONS

It is the policy of the National Park Service to incorporate the issues of accessibility in all components of the service-wide planning process, including the General Management Plan, the Development Concept Plan, Comprehensive Design, and the Interpretive Prospectus. The General Management Plan will broadly support the general policy of providing access to all visitors. The Development Concept Plan, Comprehensive Design, and the Interpretive Prospectus will then identify the specific ways in which the facilities and programs will be made accessible to the various disabled populations.

It is the policy of the National Park Service to invite disabled people with appropriate expertise and/or knowledgeable representatives into all aspects of the planning process in an advisory capacity at an early stage, and to maintain their collaboration in the park's subsequent management, in order, among other things, to assure the appropriateness and usability of access modifications. In making recommendations for appointments to advisory boards and commissions, disabled persons or others familiar with accessibility issues will be considered. All public gatherings shall be held in wheelchair accessible places and auxiliary aids for hearing and visually impaired persons should be provided when anticipated or requested.

b. ACCESSIBILITY FOR DISABLED PERSONS IN PARK FACILITIES

In accordance with the mandates of the Architectural Barriers Act of 1968 and Section 504 of the Rehabilitation Act of 1973 as amended in 1978, it is the policy of the National Park Service to provide the highest level of accessibility in all

visitor and management buildings and facilities as is possible and feasible, consistent with the nature of the area and facilities. The degree of accessibility provided will be proportionately related to the degree of man-made modifications made to the area or facility and to the significance of the facility.

The developed area of the park, including publicly used structures and areas, administrative areas, some visitor overnight accommodations, and some employee housing, when provided, and most interpretation and visitor services, will be designed, constructed or renovated to provide maximum accessibility to wheelchair people.

The undeveloped areas, such as the part of the park that is outside the immediate influence of buildings, roads, and cars, will not normally be modified nor will special facilities be provided for the sole purpose of providing access to disabled people.

Accessibility in threshold areas, such as scenic overlooks, nature trails, features of special interest, or wayside exhibits that are reached by short walks that lead from developed areas to the edges of the undeveloped ones, will be judged on the topography, the significance of the attraction and the amount of man-made modification provided. If the attraction is a significant one, every reasonable attempt should be made to make the feature as accessible as possible. On the other hand, if the amount of man-made modification is very low and the accessibility modifications would result in significant damage to the natural environment, alternative methods to provide the interpretive information or experience should be considered and utilized.

c. ACCESSIBILITY IN VISITOR TRANSPORTATION SERVICES

The policy of the National Park Service is to make all appropriate land transportation systems and services, whether provided by the Service or by concessioners, accessible to and usable by physically disabled persons unless doing so would alter the fundamental nature of the service. This should be accomplished by making a sufficient percentage of the vehicles wheelchair accessible, on a replacement or retrofit basis, so as to provide effective services. Until this goal is realized, a separate accessible vehicle will be provided or a disabled person will be allowed to drive their personal vehicle on otherwise restricted roadways. It is Service

policy that no new roads will be developed for the sole purpose of providing disabled visitors access to a given area. However, within the existing road system, efforts will be made to provide for specialized transportation needs.

Accessibility will also be provided in water transportation systems. The degree of priority in making them accessible will depend on the degree of accessibility of the area served by the system. On scenic cruise vessels, the optimal level of wheelchair access that is feasible will be provided.

d. CULTURAL RESOURCE MANAGEMENT AND PRESERVATION

For cultural properties, the National Park Service will provide the highest level of access possible while still conforming to cultural resources management policies and use and treatment standards (NPS-28). Every attempt will be made to create physical accessibility for disabled persons to as much of the property as possible without impairing the property's cultural significance. Where accessibility cannot be achieved within NPS-28, alternative solutions will be provided in an accessible location.

e. PROGRAM ACCESSIBILITY FOR DISABLED PERSONS

It is the policy of the National Park Service to assure that, to the extent possible and reasonable, all interpretive programs, recreational activities, concession operated and privately sponsored activities, publications, and any other information provided to the park visitor and/or employee shall be provided in such a way that disabled people can receive as close to the same benefits as the non-disabled person. This will include taking appropriate steps to assure that information provided in auditory ways is also available for hearing impaired persons; that information provided visually is also available to those with visual impairments; and that information provided in areas that are not architecturally accessible to physically disabled persons is also provided to the extent possible in accessible locations.

f. OFF-ROAD USE OF VEHICLES AND MOTORIZED EQUIPMENT

Disabled visitors will be bound by the same ORV regulations and restrictions as other visitors, and by the same park road limitations on size and weight of vehicles. Standard electric wheelchairs will be excluded from prohibitions against motorized vehicles. Motorized vehicles (other than electric

wheelcharis) used as mobility aids may be permitted at the Superintendent's discretion.

CONCESSIONER FACILITY DESIGN AND CONSTRUCTION

A. LAW, REGULATION AND POLICY

1. Law

See Chapter 16 of this Guideline.

2. Regulation

See Chapter 16 of this Guideline.

3. Policies

a. ACCESSIBILITY FOR DISABLED PERSONS

See Chapter 16 of this Guideline.

b. MANAGEMENT POLICIES MANUAL, Chapter III
Design and Construction Consideration

DESIGN QUALITY AND CONTROL

Only those physical facilities needed for management and appropriate public use and enjoyment shall be provided in a park area, and then only at sites designated on approved plans.

Where new facilities are needed, the Service will employ quality design of a high aesthetic and functional caliber. Facilities will be integrated into the park landscape so as to cause minimum impact.

Within small parks, or in developed areas of large parks, there will be a consistent design unity complementing the purpose, spirit and theme of an area rather than competing with or dominating park features. In historic zones, new structures erected for visitor or administrative use shall be of contemporary design but in harmony with the area and its historic resources in proportion, color, and texture. No attempt shall be made to duplicate or mimic a historic design, nor shall any modern construction be portrayed to the public as historic. Adaptive use of existing historic or nonhistoric buildings shall be considered before new facilities are constructed.

In carrying out its development programs the Service will assure compliance with all safety, accessibility, and environmental protection laws, Executive Orders, and codes where applicable.

CONSTRUCTION

Construction of park facilities shall be rigidly controlled to preclude undue damage to vegetation, soils, and archeological resources through excessive grading and alteration of contours to fit developments, and to reduce air, water, and noise pollution. The Service will adhere to all applicable Federal, State and local environmental laws, standards and emission of effluent limitations.

Facilities and structures shall not be located in areas where natural processes pose a persistent threat to the facilities or structures, or to people using them, except where no practicable alternative exists for the use, enjoyment and management of a park and all safety and hazard probability factors have been considered. Such areas include, but are not limited to, unstable shorelines; unstable geological areas subject to mud slides, landslides, rock slides, or soil creep; active dunes; thermal areas; and 100 year floodplains including coastal areas. Because of potential loss of life, injury or loss of essential or irreplaceable records and objects, structures such as schools, hospitals, and museums should not be located within 500-year floodplains.

Because of the fragility and natural resource values of wetlands and floodplains, impact from construction activities shall be avoided, except where no reasonable alternative exists to meet the management objectives of the park.

Where new facilities and structures must be located in such areas, their design and siting shall be based upon scientific, engineering and architectural studies; consideration to protection of human life, natural processes and cultural resources; and consideration to their planned life span. Existing structures or facilities located in such areas and needing rehabilitation, restoration or replacement will be subjected to the same scrutiny as those prescribed for new facilities or structures. In the case of historic structures, this scrutiny will be but one factor in determining their preservation. Before development in floodplains and wetlands is

provided, the requirements of Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," must be fulfilled. When structures or facilities are removed from floodplains and wetlands, the area will be restored and preserved in its natural state.

Where practical, soils and plants, that are moved from a site prior to actual construction, should be stockpiled for use in backfilling and the final site grading. Any surplus soils and plants can be used for the restoration of other degraded areas within the park. If additional soil and plants are needed for the construction site, they may be obtained from other sites in the park only when it is determined that use of an in-park source will not significantly affect cultural and natural resources and ecological processes.

c. MANAGEMENT POLICIES MANUAL, Chapter VIII
Approval of Concessioner Design

Plans and specifications for buildings and other structures to be erected by the concessioner, including plans for landscaping, shall be prepared at the expense of the concessioner and submitted to the Superintendent for approval in accordance with established procedures at both the comprehensive design and project planning stage before construction is begun. Such plans must comply with planning and design standards applicable to the National Park Service, and when approved, shall be adhered to by the concessioners in erecting the structures authorized.

B. ACCESSIBILITY FOR DISABLED PERSONS

Concessioners share the Service's responsibility to provide access for disabled persons. As indicated in Chapter 16 of this guideline, this responsibility includes day-to-day operational programs. In addition, accessibility must be a consideration in the designation and construction of facilities. Refer to the laws, regulations and policies found in Chapter 16 for additional details.

Extensive guidelines, including diagrams, measurements and other technical provisions, are found in 36 CFR 1190, which should be made available to the concessioner's architect.

C. DESIGN REVIEW PROCESS

Concessioners are often responsible for developing drawings and specifications for Service approved construction projects, including the renovation of buildings as well as construction of new buildings. These designs are submitted to the Service for review, comment and eventual approval.

Facility designs, except in the cases of very simple construction (as determined by the Superintendent), must be prepared by a licensed architect or engineer. They must comply with the Life Safety Code and other National Fire Codes, the National Electric Code, Uniform Plumbing Code, the Uniform Building Code and the Architectural Barriers Act of 1968. For historic structures, compliance with the Secretary of Interior's Standards for Historic Preservation Projects (36 CFR Part 68) and with NPS-28 is also required. Also, these designs must be predicated on the latest technology of construction, materials, energy conservation and efficiency of operation, as well as compatibility with the environment.

The development of drawings and specifications will begin with a pre-design conference involving the Superintendent, concessioner, the concessioner's architect, (and appropriate regional personnel if major construction is contemplated), to discuss site location, architectural considerations, procedures to follow, etc. This is followed by the preparation of schematic and/or preliminary plans in the case of larger construction, for review and approval of the Regional Director. Construction drawings are then prepared for similar approval. All drawings are submitted by the concessioner to the Superintendent for transmittal to the Regional Office (and DSC depending on the project). A pre-construction conference between the Superintendent, concessioner and contractor is held prior to actual construction. Both the concessioner and the Superintendent will conduct inspections during construction, with the Superintendent maintaining a file of all inspections and their results.

The Superintendent should provide the concessioner or his architect written Regional Office design and construction procedures and a copy of NPS-10, "Drafting Guidelines for Design and Construction Drawings."

Design standards for lodging units and food and beverage facilities are available from the DSC Concessions Branch. Copies should be provided to the concessioner and his/her architect.

If the construction is a contractual requirement, the superintendent will advise the Regional Director upon completion of the project if the contractual commitment has been met.

The chart found in Exhibit 1 to this chapter suggests a procedure to follow once a decision has been made to construct or modify a concession facility. The Superintendent should consult with his/her Regional Office for modifications of these procedures.

D. DSC REVIEW PROCESS FOR CONCESSIONER PLANS AND DRAWINGS

Preliminary or construction drawings prepared outside DSC are given immediately to the chief of the Branch of Design, and the same general review procedure used for NPS drawings is followed. The review is to be completed in 28 days.

The Concessions Branch reviews all concession drawings and is furnished a copy of all incoming transmittal memorandums.

After completion of the review, the Design Branch coordinates review comments and adds notes to a set of the drawings for use by the concessioner in the preparation of subsequent drawings or general guidance during construction of the facility. A memorandum with a recommended action and references to the notes and comments that have been made on the set of drawings is prepared for the assistant DSC manager's signature. The notes added to the drawings are to clearly identify those comments that are mandatory and those that are recommendations for consideration by the concessioner.

After the Regional Director reviews and approves the drawings, a set of full-size marked-up prints are sent to the Superintendent for transmittal to the concessioner. In those instances where comments on concessioner drawings are relatively simple and short, this procedure may be adjusted to eliminate the preparation of a marked-up set of prints for return to the concessioner.

CONCESSIONS

NPS-48

Concessioner Facility Design and Construction

EXHIBIT 1
Chapter 17
Page 1

CONCESSIONER DESIGN AND CONSTRUCTION PROCESS

ITEM	DATE	PARTICIPANTS		
		I	II	III
-Pre-design conference & on-site review of proposed project.		PK, Conc. (A/E)	PK, Reg., Conc, A/E	PK, Reg, Conc, A/E
-Develop alternative schematic designs				A/E
-Review designs & select preferred alternative			Conc., A/E	PK, Reg, DSC
-Develop preliminary plans			PK, Reg., (DSC)	Conc., A/E
-Review of preliminary plans			Conc., A/E	PK, Reg., DSC
-Develop construction documents		Conc., (A/E)		Conc., A/E
-On-site review with 90% complete construction documents		PK, Conc., (A/E)	PK, Reg., Conc., A/E	PK, Reg., Conc, A/E
-Revision and completion of construction documents		Conc., (A/E)	Conc., A/E	Conc., A/E
-Review & approval of construction documents		PK, (Reg.)	PK, Reg., (DSC)	PK, Reg., DSC
-Revisions to construction documents		Conc., (A/E)	A/E	A/E
-Pre-construction conference		PK, Conc., (CC)	PK, Conc., CC	PK, (Reg), Conc, CC
-Construction: Inspections		PK, Conc.	PK, Conc.	PK, Conc.
-Approval of completion		PK	PK, (Reg.)	PK, Reg.

DATE: To be determined by park and Region

CATEGORIES

- I - Modifications up to \$10,000
- II - Modification between \$10,000 & 50, 000;
New Construction up to \$100,000
- III - Modification over \$50,000; New Construction
over \$100,000

PARTICIPANTS

Park (PK), Regional Office (Reg), Denver Service Center (DSC)
Concessioner (Conc.), Concessioner's Architect or Engineer (A/E),
Concessioners's Contractor (CC)

() = Optional

RATE ADMINISTRATION PROGRAM

A. LAW, REGULATION AND POLICY

1. Law

a. P.L. 89-249 79 Stat. 969, 16 U.S.C. 20

Sec. 3(b). The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Sec. 3(c). The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

b. 16 U.S.C.

Sec. 1b(4) Furnishing, [by NPS] on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System: Provided, that reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

2. Regulation

OMB Circular A-25, User Charges, September 23, 1959.

Outlines the scope of user charges for certain government services and property including utilities and defines policies, guidelines, and reporting forms for user charge systems.

3. Policy

MANAGEMENT POLICIES MANUAL, Chapter VIII

a. RATES CHARGED BY CONCESSIONERS

It is the policy of the National Park Service that rates charged by concessioners be reasonable. The reasonableness of concessioner rates will be judged primarily by comparison with the competitive marketplace with due consideration for operating differences as required by law. This is accomplished by review and approval or adjustment of concessioner rates. Such rate reviews are to be based upon studies conducted in accordance with the authorized NPS rate approval procedures.

b. OVERNIGHT ACCOMMODATION RATES

Where overnight accommodations are provided in a park, the concessioners shall maintain a reasonable proportion of their accommodations at low prices.

(See Overnight Accommodations III-8, Wilderness--Chalets and Concessioner Camps VI-9, Backcountry Commercial Services VII-12)

c. UTILITY RATES

Charges for utilities provided concessioners by the Service are based on operating costs (not including existing capital investments) or comparability, whichever is greater. Concessioners are permitted to pass through to visitors utility costs that exceed comparable utility charges. Where operating costs are so extraordinarily high that they could jeopardize the economic viability of the concessioner and the utility costs can not practicably be passed through in total to the visitor through price increases, utility charges may be adjusted downward but not lower than comparable utility costs.

(See Utility Services VII-17)

B. OBJECTIVES

The objective of rate approval is to assure that concessioner rates and charges to the public are commensurate with the level of services and facilities provided, as well as reasonable and comparable with similar services and facilities.

ties provided by the private sector. The Superintendent is responsible for meeting this objective to the greatest extent possible through approving, disapproving, or modifying concessioner rate requests after conducting a study using one of the rate approval methods discussed in Paragraph D. 4. and Paragraph E.

Rate approval decisions must be properly documented by supporting rate approval studies. These studies must meet the objective stated above and should also:

1. Produce defensible results which are valid and reliable.
2. Provide a degree of uniformity and consistency Servicewide.
3. Be as simple and as objective as possible.
4. Address all types of facilities and services found in the park area.

C. RESPONSIBILITIES

1. Washington

- a. Establish and update policy.
- b. Ensure actions by Regions are consistent with policy and coordinated among Regions.
- c. Upon request, provide current price increase/decrease index to Regions and rates for hostel operations as charged by American Youth Hostels, Inc.
- d. Provide training to the Regions in the use of the rate approval process.

2. Region

- a. Provide assistance to park areas as required and requested.
- b. Ensure that the application of the rate approval procedure is consistent with policy.
- c. Provide training.
- d. Provide guidance, training and approval of the selection of rate study methods by the park.
- e. Rule on rate appeals.
- f. Provide current price increase/decrease index to parks as needed and/or requested.

3. Park

- a. In cooperation with concessioners, establish a time-frame in which rate requests are to be submitted.
- b. Perform rate approval studies for each concession service as needed, using the method agreed to between the Region and park after the park has consulted with the concessioner.
- c. Approve a rate schedule, including each product, category of products in some cases, or service offered by the concessioner.
- d. As necessary, adjust rates to recoup utility costs.
- e. Monitor the concessioner to assure that only approved rates are charged for the specified quality and quantity of goods or services sold.
- f. Provide Region with such rate studies and current rate schedules if they are desired by the Region for overview purposes.
- g. Maintain current rate schedules at the park.

D. ELEMENTS OF THE PROGRAM

1. Preparation And Use Of Rate Schedules

a. RATE REQUEST SUBMISSION - Timeliness - The Superintendent in cooperation with the concessioner, will establish deadlines in which the concessioner will submit rate requests which the Superintendent will review and act upon. Due to different conditions in each park and the method of operating by concessioners, timetables will vary. It is, therefore, incumbent upon the Superintendent and the concessioner to establish submittal and review time frames for rate requests, taking into consideration the need for concessioners to prepare advertising material, brochures, rate schedules for the public, and supplying these to commercial tour agents and others who prepare tour information. The established time frames are to be documented and made part of the concessioner's pricing file. Time frames should not be construed to deny the concessioner the privilege of requesting reviews consistent with comparability.

Utilizing the procedures in the rate approval process, rate requests can be reviewed in minimal time, once the method has been determined and used once. Therefore, to expedite requests, the concessioners should be encouraged to notify the Superintendent of their intent to submit price increase requests so that the Superintendent can begin to update the pricing data, and thereby minimize the review time, and yet be able to conduct a thorough pricing review.

b. REQUIRED INFORMATION - When requesting an increase in prices, the concessioner is to provide the following information as appropriate. This data is to be made part of the rate schedule that is discussed in Paragraph d., below.

- (1) Portions of all food service items.
- (2) Items provided with dinners, i.e., salads, beverage, dessert, etc.
- (3) All menus to be used, including childrens' menus.
- (4) Description of room accommodations, such as two double beds, with or without bath, etc.
- (5) In-season and off-season rates, special rates, group rates, if appropriate.
- (6) Price per extra person, crib, etc.
- (7) Distance, routes to be followed, ratio of guides to visitors utilizing service, narrators, etc., for tour and guide-type operations.
- (8) The cost basis of markup is to be specified indicating transportation, trade, or cash discounts.
- (9) Reservation deposits and cancellation refunds and charges. (See Chapter 29 of this Guideline, Reservations and Conventions).
- (10) Reduced Rates to Federal Employees. (See Chapter 30 of this Guideline, Accepting Reduced Rates and Items of Nominal Value From Concessioners.)
- (11) Complete description of service/product to be provided for the price charged.
- (12) Any additional information needed to assist in the price analysis.

c. OTHER PROVISIONS - In administering the concessioner rate process, the following provisions are to be followed:

- (1) **Approved Rates** - Approved prices are to be the maximum charged the visiting public. Under no circumstances will higher prices be charged. In addition to a maximum price, the approved rate includes the minimum product or service. As an example, smaller food portions than those portion sizes approved on the rate schedule will be regarded as an unauthorized rate.

Many times, rates for the next year are requested by the concessioner in late fall or winter because of the need to print rate schedules, complete budgets, and commit prices to certain organizations. In some cases, the comparables will take a wait-and-see attitude. This results in the concessioner's needing the year's rates approved in, say, January, to be effective at the beginning of the season, when the comparables are not ready to decide on their rates until late spring.

When this situation occurs, the concessioner should be allowed a rate based on the previous year's rates, with consideration being given for known cost increases, i.e., labor costs, or by other expected increases. This will allow rates to be set early enough for the concessioner to work out budgets as well as promotional materials, and should not result in a significant disparity of rates if they are reviewed and adjusted each year. However, when this system is used, a rate study is to be done during the upcoming season to readjust the rates so that this system is not a perpetually used method, thus skirting the use of an approved rate method.

(2) **Special Requests** - No requests for an approved price should be submitted by the concessioner unless the item is to be normally offered on a regular basis, except food items as explained below. The Superintendent may decide not to specifically approve rates for special occasions or groups and may allow the concessioner latitude to determine these prices.

The concessioner may request prices for food items which are not normally served but which he/she desires to serve as a result of special purchases, special meals for groups or emergencies.

In certain cases, telephone requests may be made to obtain approval if expediency is needed. These should be immediately followed by a written request if required by Superintendent.

(3) **Food Service Menus** - The approval of individual food item prices are only part of the pricing program. During the rate approval process, the concessioner will also prepare the menu and submit such to the Superintendent for approval. The Superintendent is to review the menu for appropriate selection of entrees, food variety, price range for food categories, i.e., beef, fish, fowl, etc., and overall pricing.

(4) **Rate Request Supplement** - Normally, in only three situations should the Superintendent ask the concessioner to submit information indicating an estimate of the effect the price charged will have on gross sales and/or profits. The three situations are: when the Financial Analysis Method (7) is to be used, when the situation exists which was mentioned in D.1.c.(1) and when prices are adjusted to recoup utility costs as discussed in Paragraph F.1. In such situations, a broad estimate will be accepted for food prices, while a more stringent estimate would be required for lodging, marina, and other

high-priced services. Under the Financial Analysis Method, and adjusting to recoup utility costs specific estimates will be required for all price increase requests, as well as other information.

(5) **Individual Item Rates** - All rates for goods and services are to be approved on an individual basis as far as practicable. However, the merchandise pricing method for groups or categories of products should be used, instead of specific items for general merchandise, groceries, souvenirs, and other similar items.

d. THE RATE SCHEDULE

After rates have been approved, a rate schedule is to be prepared by the Superintendent and a copy provided the concessioner and an initial copy provided the Regional Office as requested. The rate schedule should be as specific as possible to show the value received for the price charged, i.e., food portion.

For ease in administering, rate schedules should be divided into sections for the various services and facilities provided, and possibly retained in looseleaf notebook form. The following outline is suggested:

(1) **Food and Beverage** (Including Menus)

- Full Service Restaurants (breakfast, lunch, dinner)
- Cafe-Family Restaurants (breakfast, lunch, dinner)
- Cafeteria (breakfast, lunch, dinner)
- Fast food
- Cocktail and Other Beverages

(2) **Lodging**

- Lodges and Cabins
- Hostels
- Campgrounds
- European Plan/Rates
- American Plan/Rates

-Discounts

-Package Plans

(3) Retail Merchandise

-General Merchandise

-Grocery

-Genuine Native and/or Indian Handcraft

(4) Marina Operations

-Slips, Moorings, etc.

-Boat Rentals

-Gasoline and Other Miscellaneous Items

(5) Tour Operations

(6) Gasoline and Service Stations

-Petroleum Products

-Repair Services

-Towing and Other Services

(7) Miscellaneous and Other Services

Reservation deposit and cancellation refunds and charges (See Chapter 29, Reservations and Conventions).

Reduced Rates to Federal Employees (See Chapter 30, Accepting Reduced Rates and Items of Nominal Value From Concessioners)

Each page should be numbered and each section heading of the rate schedule and all amendments thereto are to contain the following wording:

These rates are to remain in effect until specific changes are approved by the Superintendent.

Minor changes to rates are to be made on a page-by-page amendment to the basic schedule, and for major changes, the entire schedule

should be redone. Each page amended should show the approval date of the basic schedule and the amendment date.

A sample rate schedule follows:

LODGING
RATE SCHEDULE

SAMPLE

XYZ
CONCESSIONER

TOE PAW--RMR
PARK REGION

MOTEL-EUROPEAN PLAN
SERVICE

BIG CIRCLE BASIN
LOCATION

	<u>Description</u>	<u>Approved</u>
Rooms 101-236	w/Bath, 2 Dbl Beds	\$xxxx
	2 Person	xxxx
	3 Person	
	4 Person	
Rooms 301-420	w/Bath, 1 Dbl Bed	\$xxxx
	1 Person	xxxx
	2 Person	

Above rates are reduced by \$3.00 between October 15 and February 29, inclusive. Rates reduced 10 percent for Federal employees conducting official business. The rates include an add-on of 50¢ for utility charges. The amount of gross receipts as a result of the add-on may be excluded from the franchise fee calculation.

Other:

Deposit - \$xxxx - Refunded if reservation cancelled within
48 hours of scheduled arrival

Additional Per Person Rate \$xxxx

Roll-Away, Crib \$xxxx

Room Service: Menu Attached

Above Rates Approved: _____

Date/Signature

Previous Rates Approved: _____

Date

These rates are to remain in effect until specific changes are approved by the Superintendent.

2. Appeal Process

In situations where a concessioner is not satisfied with the rates approved or comparables selected by the Superintendent or the adjustment for recouping utility costs, the concessioner may appeal the Superintendent's decision. If not settled at the park level, the concessioner may appeal to the Regional Director.

The appeal should be in the form of a letter to the Superintendent with the statement that the concessioner is appealing to the Regional Director. The letter should contain whatever support or statement of the problem that the concessioner feels is necessary.

Immediately upon receipt, the Superintendent will forward the letter to the Regional Director along with his/her comments and all related correspondence. A final determination will then be made by the Regional Director. While a determination is being made, the rates in effect shall be those most recently approved by the Superintendent. A breach of these approved prices may result in a contract violation.

The decision of the Regional Director shall be transmitted to the concessioner by letter through the Superintendent. If the Regional Director has changed the Superintendent's decision, the Regional Director's memorandum shall become an amendment to the Superintendent's approved rates. This appeal should be acted upon without unreasonable delay. This process is not intended to circumvent any of the concessioner's legal rights.

3. Complaint System

In order to obtain valid and responsible visitor comments, the following notice will be prominently posted at locations deemed appropriate by the Superintendent.

This service is operated by (name of concessioner), a concessioner under contract with the U.S. Government and administered by the National Park Service. The concessioner is responsible for conducting these operations in a satisfactory manner and the reasonableness of prices are based on comparability. That is, the prices are based on those prices charged by closely similar private enterprises outside the park for similar services with due consideration for appropriate differences in operating conditions. Such considerations may include length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant.

Please address any comments to:

(Superintendent's name and address)

4. Methods And Criteria For Use

Below is a brief description of each rate approval method and criteria for their use. The criteria elements must generally be met before a given method is to be used. Any exceptions should be documented and, agreed to by the Region.

a. FULL REVIEW OF SIMILAR SERVICES

(1) **Description**

A process by which the Superintendent makes a detailed analysis of comparables features and prices.

The analysis utilizes the traditional comparability methods and concept contained in Volume I of Concessioner Comparability Study Procedures prepared by Cooper and Lybrand in March 1979, which should be retained for background reading. The following is a brief comparison of this approach and Coopers and Lybrand's:

(a) Will stress competition and price, where C/L Volume I puts more emphasis on cost.

(b) Will modify C/L Volume I criteria so that each item is considered in the process, however, every item is not absolutely required as in the past.

(c) Will eliminate all arithmetical processes except the use of price averaging for comparative purposes.

(d) Will retain extra quality feature worksheet for the purpose of comparing quality to price which may be used in upgrading (if necessary) a concessioner's services.

(2) **Criteria**

(a) To be given first consideration

(b) Comparables operating in a competitive market are available.

(c) Quality of service and amenities are important factors in establishing prices.

b. SIMPLIFIED REVIEW OF SIMILAR SERVICES

(1) **Description**

A process by which the Superintendent makes a quick review of rates charged by the private sector by use of a simplified worksheet for his judgment in determining if rates are comparable.

(2) **Criteria**

(a) Cost effectiveness - in view of budgetary constraints, travel, personnel, etc.

(b) Low Volume sales (minor economic impact).

(c) Service not one covered by full review method. (Exception is permissible if full justification is approved by Region).

(d) Sensitive merchandise items, i.e., limited edition items with fluctuating selling price.

(e) Comparables available.

c. SPECIFIED RATE ON AUTHORIZATION

(1) **Description**

A process by which the provision in P.L. 89-249 allowing rates to be determined as "provided in the contract" is used. Approved rates are specified in the authorization as well as method of indexing adjustment. Initial rates are determined by:

(a) The NPS following standard rate approval process; rates are published as part of the Fact Sheet or Propectus: Or:

(b) Competition through the response to the Fact Sheet or Prospectus bidding process. Or:

(c) Negotiation with a successful bidder, documented in the contract file to show basis of rate.

(2) **Criteria**

(a) Limited number of items or services, e.g., transportation.

(b) No comparables readily available.

(c) Usually a unique service.

(d) Administratively determined at Region or higher level to be advantageous to the Government.

d. MERCHANDISING PRICING

(1) **Description**

On a Servicewide basis, maximum markups for specific merchandise categories are established by the Service for use by the Superintendent in determining rate approval. These markup guidelines are determined by a survey of similar industries. The application will be to price merchandise by percentage formulas applied to cost, e.g., curio, handcrafts, groceries, sundries, etc. However, the manufacturer's or product's suggested retail price, if available, shall be followed, except in cases where this causes undue hardship on the concessioner because of the availability cost.

(2) **Criteria**

The first preference for all retail categories of goods where it is the industry practice to set prices according to desired margin for a product line. Examples include curios, handcrafts, groceries, general merchandise, etc.

e. COMPETITIVE MARKET DECLARATION

(1) **Description**

A process by which the Superintendent determines that the pricing of a specific item, items, or service is not related to or enhanced by operating within the NPS area. Such services include those in a highly competitive market, negotiated sales items, and unique items (such as antiques) whose value is unrelated to the location where they are sold. In these circumstances, a declaration is made that further rate reviews are unnecessary as the concessioner's pricing must be competitive to secure business and is therefore comparable. This declaration must be reviewed annually and will require that the basic maximum rate increase still be required and approved.

(2) **Criteria**

(a) Either must exist in a highly competitive market, or:

(b) If price is routinely negotiated between vendor and customer, or:

(c) One of a kind items. Although a few handcraft items may fall in this category, the intent is to generally review handcraft by the merchandise pricing method.

f. INDEXING

(1) **Description**

A fast and easily implemented process by which the Superintendent can approve or adjust prices without the need to go through the complete process of using one of the other comparability methods. Indexing uses consumer price index for all Urban Wage Earners and Clerical Workers (cost of living changes) prepared by the U.S. Department of Labor, Bureau of Statistics, to establish a price increase or decrease as in a particular class of service. This process may only be used when a base price has been established by one of the other approved methods.

(2) **Criteria**

(a) Used in conjunction with and/or subsequent to rates established by another method.

(b) Used for interim rate approvals, except for Method 3, where it becomes a part of that method. Base rates adjusted by indexing shall be reestablished at least every 12 months.

(c) When dictated by management constraints; example: time, travel, money, turnover, (Must be documented).

g. FINANCIAL ANALYSIS

(1) **Description**

This is a process by which the Superintendent determines if prices are comparable with the industry, after considering, documenting, and exhausting all other possible methods to comparability. The Superintendent will then approve rates through the use of a financial analysis system approved by WASO. These rates will be derived from the concessioner's submittal of financial data. Specific financial ratios of the concessioner are compared to industry norms, considering sales, investments, and expenses. With this information, the Superintendent would then approve prices after considering operating performance and other specifics of the concessioner.

(2) **Criteria**

(a) No other method is applicable; used as last resort.

(b) No comparables available.

(c) May be used to initiate rate for Method 3
(Specified Rate On Authorization).

E. METHODS -- DETAILED EXPLANATION

1. Method 1, Full Review of Similar Services

This study method is accomplished by tying the concessioner's rates to those of a competitive marketplace and adjusting for operating differences as required by statute and similar to the old Concessioner Comparability Study Procedures, Vol. I. One might want to review that document for some good background knowledge. Under this method it will be the Superintendent's responsibility to search for similar businesses (the comparables) and use these in a rate study which provides the basis for approving prices.

The purpose of comparability rate approval is to offset the possibility of monopoly pricing on the part of concessioners. By selecting a business which provides a service similar to that of the concessioner that is operating in a competitive situation outside the park, the comparability procedures should introduce competitive pricing to the in-park operations. For this reason, it is important to select businesses that are not only comparable in character, but that derive their prices from a competitive market.

The selection of comparables is the cornerstone of the entire process. The ultimate success and fairness of the approved rates--both for the visitor and the concessioner--hinge on these choices. For our purposes, a comparable is defined as a retail or service enterprise providing essentially the same product in similar facilities and under similar conditions as our concessioner, and whose prices potentially can be used to assist in determining appropriate rates to be charged by the concessioner.

Since selection of the comparable is fundamental to the Superintendent's ability to analyze the information gathered, it is desirable that the Superintendent and the concessioner be in agreement concerning the comparables selected. If the parties fail to agree on the comparables selected by the Superintendent, then the concessioner may appeal the decision as defined in the appeal process.

Once the similar operations are selected and the products and/or services are reviewed, the most comparable operations should surface. The facilities that match the most points listed as criteria will generally be the most comparable. The rates offered by the concessioner are to be based on those considered most comparable. Rates may be modified according to how the operating conditions and product quality of the comparables differ from the concessioner. Those comparables that are so different that adjustment is not possible must be

eliminated from consideration. However, in most cases, with careful selection of the comparables, only minor adjustments will be necessary.

Transportation and/or delivery costs (surcharges) for food, for example, often are identified separately on vendor invoices. Another such cost would be employee housing cost to the extent that it exceeds revenues from employees when it is not provided by the comparable operator. When such cost can be directly attributed to a service or product, this cost can be allocated directly to the service or product and the price can be adjusted accordingly. When considering direct adjustments to the price the concessioner should provide all necessary documentation. The Superintendent must assure himself that any adjustment is completely justified.

The final step in the process, the actual determination of the concessioner's prices, is based on the Superintendent's analysis of information gathered and the relationship between facilities, services, products, and other mitigating factors.

This method of full review of similar services provides criteria to use in the selection of comparable operations and provides extra quality features to consider. Services currently provided for include: (a) Food and beverage service, (b) Lodges and cabins, (c) Hostels, (d) Campgrounds, (e) Marina operations (f) Tour operations and (g) Gasoline service stations.

Standards for additional services may be produced when it is determined to be desirable to do so.

It is essential that the person conducting the studies for this method be appropriately trained by the Regional Concessions staff in the process for each industry he encounters.

a. FOOD AND BEVERAGE SERVICE INDUSTRY

In order to determine comparability for this industry, the following criteria should be examined:

(1) **Facility Type or Food Service Classification**

Restaurants can be classified according to different criteria--types of service, menu, atmosphere, etc. A restaurant should be similar in each of these classifications before it is deemed comparable.

(a) **FAST FOOD STYLE**

-Stand-up

-Sit-down

- Carry-out
- Paper Service
- Table Service

(b) COFFEE SHOP

- Buffet
- Cafeteria
- Dining Room Informal
- Dining Room Formal

These are important criteria because of the variance in operating costs and any variance should be well-documented and thoroughly thought out.

(2) **Similar Sales Mix: Food/Alcoholic Beveragage**

The comparable should have approximately the same mix between its alcoholic beverage sales and its food sales. Beer, wine, and alcoholic beverages are high profit sources and an operator who sells any significant quantity of these products has an economic advantage over one who does not. This can off-set or add to food sales and may affect food prices.

(3) **Similar Number of Seats**

Ideally, the comparable should have the same range of seating capacity. This will greatly ensure similar costs, all other things being equal, although it is certainly not clear that a restaurant with a greater seating capacity will charge more or less for its menu offerings. Ideally, the comparable should have the same range (variance should not exceed 50 seats).

- less than 100 seats
- 100-250 seats

(4) **Similar Menus**

It is essential that the comparable facility offer a similar menu--otherwise there will be nothing to compare with the concessioner's menu offerings.

- Fast food type
- Sandwiches
- Family style
- Ethnic
- Limited
- Specialty
- Gourmet or fine dining

(5) Similar Number of Meals

Ideally, the comparable facility will offer the same number of meals as the concessioner. That is to say breakfast, lunch and dinner.

(6) Degree of Competition

Each comparable operation should have at least two other restaurants in competition with its own. The greater the degree of competition (more restaurants used in the study) the greater the assurance of accuracy and fairness in the pricing approval.

(7) Geographical Proximity of Suppliers

Comparables should be in the same range:

- less than 50 miles
- 51-100 miles
- Over 100 miles

(8) Seasonality

The comparable facility should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(9) Location and Clientele

Ideally, the comparable facility should be in a similar location as the comparable and depend heavily on the same type of clientele, i.e., tourist-oriented, etc.

(10) **Employees**

Ideally, the comparable facility should have a similar ratio of employees to the number of seats.

$$\frac{\# \text{ Seats}}{\# \text{ Employees}} \times 100 = \underline{\hspace{2cm}}$$

(11) **Methodology**

Menus should be collected from those facilities deemed comparable under the above criteria. The concessioner's menu items should then be compared with similar menu items from the comparable restaurants. Considering the extent to which the comparable and concession match up with the selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner possible changes to his menu offering (size, quantity, quality) and/or services (table tops, decor, number of waiters, etc.) to match price, menu offering and services.

FOOD SERVICE
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURES

	COMPARABLES			
	C O N C E S S I O N E R			
<u>Features (Check if present)</u>				
<u>Facility Related</u>				
<u>Carpeting</u>				
<u>Booths</u>				
<u>Counter Seats</u>				
<u>Provisions for the Handicapped</u>				
<u>Comfort Related</u>				
<u>Smoking/Non-Smoking Area</u>				
<u>Air Conditiong</u>				
<u>Recorded Music</u>				
<u>Live Entertainment/Stage</u>				
<u>Service Related</u>				
<u>Flowers or Plants on Tables</u>				
<u>Take-out Service Available</u>				
<u>Liquor License Held</u>				
<u>-Wine and Beer</u>				
<u>Caters to Tour Groups and</u>				
<u>Organizations</u>				
<u>Major Credit Cards Accepted</u>				
<u>Linen Tablecloths (Dinner)</u>				
<u>Glass vs. Paper Cups or Plastic Cups</u>				
<u>Stainless or Silverplated Tablesetting</u>				
<u>vs. Plastic</u>				

More features may be added as they are observed during the comparability review, i.e., toothpicks, mints, wetnaps, and so on.

b. LODGES AND CABINS

In order to ensure that the Concessioner's rates are evaluated fairly and consistently within the constraints of Public Law 89-249 as it pertains to comparability, the person responsible for the comparability study procedure should cover each of the following criteria and explain why each was or wasn't used in selecting a comparable operation.

(1) **Similar Size**

Lodging properties of varying size (numbers of guest rooms) can have different costs of construction and different costs of operation. Ideally the comparable would fall within a similar size range as the concessioner. This is not absolutely essential because the concessioner's property and those of the potential comparable are most apt to have been constructed at different times and, therefore, at a different cost per room. Facility size has been divided into the following categories:

- less than 75 rooms
- 75-150 Rooms
- Over 150 rooms

Ideally they should have the same range.

(2) **In-Season Occupancy Rate**

A comparable facility should lie within the same in-season occupancy rate category as the concessioner. This is a very important consideration and would require an indepth justification for deviation. Categories are defined as:

- Under 68% occupancy
- Over 68% occupancy

Ideally they should have the same range

(3) **Building Type**

A comparable facility should be of the same building type in order to select a facility which has similar construction and maintenance costs. Again, this is the ideal and could be waived with justification. For example, a new one or two story property could have higher construction costs than a multi-story old inn. At the same time, the newer facility could have lower maintenance costs than the older property, which may tend to off-set or negate any differences when it comes to price determination. Categories are:

- High Rise (3/more stories)
- Low Rise (2 stories)
- Single Story Attached
- Detached Rooms or Cabins
- Tents

(4) Seasonality

A potential comparable must account for 75% of his annual business in a season which is within two months of the concessioner.

(5) Competition

A comparable must have at least one, and should have at least two other competitors in order to avoid the appearance of monopoly pricing. They should be located in an area where entry and exit is relatively free and unencumbered by permits or corporate restrictions. (This generally would exclude other properties located on Federal, State or local lands).

(6) Similarity of Area

A comparable property should be located in a similar environment. This is to say properties located in or around downtown center cities and airports should not be compared to those in remote, natural settings. Ideally a concessioner located in a mountain setting would be compared to one also in a mountain setting. One in an ocean front setting with another ocean front setting, etc.

(7) Similarity of Clientele

A comparable facility should serve a clientele similar to that of the concessioner. The concessioner will be serving the vacationing public almost exclusively. Properties that serve a significant percentage of commercial or convention business will operate differently, have different costs and average revenues, for the most part, than those serving the tourist trade.

The average length of stay is of prime consideration under this criterion (i.e., 1, 2, 3 . . . or more days).

(8) Similar Age of Facility

Either new construction or renovation.

(9) Construction Type

- Masonry/Steel Exterior - Finished Interior
- Masonry/Steel Exterior - Unfinished

- Frame/Wood
- Canvas

(10) **Remoteness**

Distance from major suppliers (50-150 miles).

(11) **Affiliation**

- National Chain
- Regional Chain
- Nonaffiliated

(12) **Employees**

-Number of employees per 100 rooms

(13) **Housing of Employees**

Is the operator responsible for housing employees? If yes, the percent to the total number of employees.

(14) **Rating by Other Organizations**

Consider rating by other organizations (AAA, Mobil, etc.). As an example, 4-Star in the park to 4-Star outside the park, or if different, then analyze the reason for that.

(15) **Methodology**

Utilizing a spread sheet showing the rates per number of people, the room rates should be compared with those facilities deemed comparable under the above criteria. Considering the extent to which the comparable and concessioner match up with the selection criteria and the extra quality work-sheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

LODGES AND CABIN FACILITIES
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURES

	C O N C E S S I O N E R	COMPARABLES			
<u>Features</u> (Check if present)					
<u>Facility Related</u>					
Television					
- color/no charge					
-BW/no charge					
-movies via TV/no charge					
Telephone					
- direct dial					
-switchboard operated					
Swimming Pool					
-indoor					
-outdoor/heated					
-outdoor/not heated					
-pool deck/patio area					
Retail Facilities					
-gifts/souvenirs					
-personal needs/drugs					
-outdoor equipment (i.e., camping, fishing etc.)					
-other (i.e., groceries, sundries, etc.)					
Restaurant/Bar Facilities					
-cafeteria					
-full-service dining room					
-bar					
Rooms					
-temperature control					
-shower or bath in each					
-suites					
-rooms adapted for handicapped					
-conference or meeting rooms					
-rooms with kitchens					
Vending					
-in-room					
-common area					

	COMPARABLES			
C O N C E S S I O N E R				
Fireplaces				
- in common areas				
- in rooms				
Designated Bus/Camper Parking				
Children Play/Area				
Recreation Room				
Marina				
Beach				
Tennis Courts				
Golf Privileges				
<u>Convenience/Comfort Related</u>				
Air Conditioned Guest Rooms				
Wall-to-Wall Carpets in Rooms				
Grade A Furniture				
Special Bed Equipment (i.e., magic fingers, bedside lighting controls, etc.)				
<u>Service Related</u>				
Baggage (Bell Hop)				
Valet Parking				
Room Service				
Entertainment				
Medical Assistance/RN on Duty				
Audio Visual/Movies				
Make Other Reservations				
Have Rental Cars Available				
Major Credit Cards Accepted				
Registration Office Open 24 Hours				

More features may be added as they are observed during the comparability review, i.e., free ice, king size beds, and so on.

c. HOSTELS

The nature of these operations are unique in that they provide only bare essentials. Sleeping accommodations may be either individual or dormitory type sleeping quarters, guests may prepare their own meals and provide their own bedding (sheets or sleeping bags) and normally share in domestic duties. Many hostels are operated on a non-profit or subsidized basis. Due to this uniqueness, comparable facilities may be difficult to locate but consideration should be given to the following and rates approved accordingly.

(1) **Type of Facility**

For our purposes hostels are divided into four types, which parallel the classification used by American Youth Hostels, Inc. (AYH). Generally, all facilities will have basic elements including: kitchen, eating area, lounge and separate sleeping areas and bath for men and women. The primary difference between the four types is size and other amenities. The four types beginning with the most basic are:

(a) SHELTER HOSTEL

The operation is not fully developed to include all of the basic elements stated above. The facilities are more primitive than the other three types in that dormitories may be shared by male and female, more bunks in a smaller area, beds may be cots, pads, or simply a mattress on a floor, inadequate heating, there may be only one toilet per 20 people and possibly be no electricity or garbage disposal.

(b) SIMPLE HOSTEL

This is a more developed operation. There are at least 25 square feet per person in sleeping quarters, bunkbeds, laundry of all bed covers, at least cold water, washing facilities and fully equipped kitchen.

(c) STANDARD HOSTEL

In addition to containing the amenities for a simple type, the standard hostel has at least 30 square feet of floor space per bed in dormitory type quarters, hot and cold water, showers or tubs, large dining room and common rooms.

(d) SUPERIOR HOSTEL

This type is much larger and has more amenities than the other types. Some of the sleeping quarters have six or fewer

beds. There is a minimum of 40 square feet per bed, sheet sack or linen rental is available, facility may be accessible in daytime, there may be separate game rooms, quiet rooms and common rooms, and washer and dryers are available.

(2) NPS Assistance

Consideration should be given to the amount of assistance the Service provides a hostel. Such assistance may be in major building renovations, maintenance or establishing service, registration assistance or other services.

(3) Guest Assistance

Consideration may be given to the degree that guests will be required to participate in maintenance and domestic chores that are directly related to the hostel operation.

(4) American Youth Hostels, Incorporated (AYH)

This organization directly operates about 40 hostels and approximately 240 independent operations are affiliated with AYH. AYH has developed standards for four types of facilities and have established maximum summer and winter rates for each. The size of the AYH operation and their reasonable standard rate structure provides an excellent basis for rate comparability and for adjusting rates upward or downward. Upon request the Washington Concessions Division will provide information on AYH rates and location of their facilities.

(5) Separate Fees

AYH and other such organizations frequently charge a special user fee or charge that goes toward a development fund. Concessioners are prohibited from charging a fee independent of the approved accommodation rate.

(6) Methodology

Considering the extent to where other hostel operations and the concessioner match up with the selection criteria or with the rates charged by American Youth Hostels, Inc., approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities to match the prices of like operations.

d. CAMPGROUND ACCOMMODATIONS

Campground facilities can include provisions for tent camping and/or recreation vehicles (RVs.) Comparables are to be selected from a similar

area and environment as the concession operation. To determine comparability for campground facilities, the following criteria should be examined.

(1) **Similar Size**

Campgrounds of varying size (number of sites) can have different operating costs. Ideally the comparable would fall within a similar size range as the concessioner. Campground size has been divided into the following categories:

less than 100	sites
100 - 200	sites
200 - 350	sites
over 350	sites

(2) **Site Type**

A comparable campground should serve a clientele similar to that of the concessioner. Many commercial campgrounds provide distinctly different areas for RV users and tenters or mixed use. In these cases, it is appropriate to compare the concessioner campground with just that segment of the commercial campground which it most resembles; extra features such as bath-houses, laundries or swimming pools, are credited according to the degree to which they serve the selected segment. Sites can be classified by three types:

(a) **PRIMARILY RV:**

High density, sites are small, close together, tent space is lacking or minimal, hook-ups are the rule.

(b) **PRIMARILY TENT:**

Access roads are narrow or steep, or may be lacking, few sites are level, no large vehicle parking, hookups are lacking or scarce.

(c) **MIXED USE:**

More than half of the sites are equally useable by tenters or RV's (up to about 26'), average site separation is 50't, hookups may or may not be provided (their presence or absence would be taken into account as extra quality features). Most National Park Service Campgrounds fall into this category.

(3) **Seasonality**

The comparable campgrounds should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(4) **Average Annual Occupancy**

Annualized average percentage of site rentals of the comparable should normally be within 10% + or - of the concessioners. If this range is not available a wider range may be used but should be taken into consideration in the final rate adjustment.

(5) **Degree of Competition**

Campgrounds should have two competitors to be regarded as a comparable. The competitors should offer similar services and amenities as that of the comparable and have separate ownership.

(6) **Affiliation**

- National chain
- Regional chain
- Non affiliated.

(7) **Ratings By Other Organizations**

As a matter of policy, most campground rating organizations do not rate government-owned campgrounds. Direct comparison will not therefore be possible. Their directories do, however, provide a useful catalog of facilities from which to select tentative comparables.

(8) **Methodology**

Utilizing a spread sheet matching the rates for those facilities deemed comparable under the above criteria, comparable campgrounds should be compared with those of the concessioner. Considering the extent to which the comparables and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

It is not uncommon for a campground operator to offer a service free to campers and allow others to use it for a fee (swimming pools, for instance). In such cases it will be easy to determine the value placed on that service.

NOTE:

Concessioner Rate Schedules should state that the concessioner will honor the Golden Age and Golden Access Passports.

CAMPGROUNDS
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURES

Features (Check if present)	C O N C E S S I O N E R	Comparables				
<u>Facility Related</u>						
Water Hook Up						
Electric Hook Up						
Free						
Extra Charge						
Extra Charge for Aid Cond. Only						
Showers						
Cold Water - Free						
Hot and Cold Water - Free						
Coin Operated						
Rest Room Service						
Pit Type Toilets						
Flush Type Toilets						
Cold Water						
Hot and Cold Water						
Rest Room-Construction						
Wood						
Interior - Rough Finish						
Interior - Finished Walls and Ceilings						
Showers - Common Area						
Showers - Partioned Stalls						
Heated						
Water						
At Individual Site						
Scattered Hydrants						
Central Only						
Dumping Station						
Free						
Extra charge						
Sewage Hook Up						
Free						
Extra charge						

	C O N C E S S I O N E R	COMPARABLES				
Features (Check if Present)						
<u>Facility Related</u>						
Site Accessibility						
Rough or Gravel road						
Paved						
Pull-through for RVs and trailers						
Provisions for Handicapped						
Lighted Areas and Path						
Picnic Table at Site						
Fireplace/Grill At Site						
Site Seclusion						
Utmost						
Moderate						
Limited						
Trash Receptacles						
At Site						
Centralized						
Service Related						
Camper Store						
Food Service						
Gasoline Service Station						
24 Hour On Site Attendent						
Firewood Available						
Coin Laundry Available						
Ice Available						
Vending Machines						
Swimming Pools						
Tennis Courts						
Children's Playground						
Hiking						
Interpretation Program						
Entertainment Program						
Recreation Room						

Other factors may be added as they are observed during the comparability review.

e. MARINA OPERATIONS

The essential service that marinas provide to boaters is access to a body of water. The primary physical attribute of a marina is a dock or mooring area and, often, a launching area for smaller boats. Although marinas provide other services, this study method deals only with dock slip rental, mooring rental and launching.

In order to determine comparability for this industry, the following criteria should be examined:

(1) **Similarity of Operation**

Marinas should serve the same basic type of boats. Marinas that serve primarily large boats over 25 feet in length, are normally designed and operated as home berths for these boats. They provide some degree of protection from a variety of weather conditions, security, and, usually, additional services such as a marine railway and facilities for major repairs. Smaller boats are usually launched for each use and are kept on land in storage or on trailers between uses. Launching facilities and small motor repair are important services in these marinas. One should note the area where most of the revenues are derived (launch or home berth) when selecting a comparable.

(2) **Degree of Competition**

Marinas should have two competitors to be regarded as a comparable. The competitors should offer similar services and amenities as that of the comparable and have separate ownership.

(3) **Similarity of Natural Area**

Oceanside marinas or marinas on saltwater bays may have a different degree of investment and boaters expect a certain type of experience when using these facilities. Inland marinas, may be compared to oceanside and bay marinas when they are built to protect boats from similar extremes of weather and from similar effects of waves or tidal action. Another factor to be considered is the method of anchoring the marina, i.e., piling or cable based on the fluctuation of the water.

(4) **Type of Service**

The comparable should offer similar type services, slip rental, mooring, launchings, restaurant, store, etc.

(5) **Seasonality**

The comparable facility should be within the same range (2 months) in terms of months to reach 75% of annual volume as the concessioner.

(6) **Geographical Proximity of Suppliers**

Comparables should be in the same range:

- less than 50 miles
- 50 to 100 miles
- Over 100 miles

(7) **Average Annual Occupancy**

Annualized average percentage of slips or mooring rentals. The comparables' annual average percent of occupancy should normally be within 10% + or - of the concessioner's.

(8) **Market Area/Clientele**

- National
- Regional
- Local

(9) **Dock Type**

- Floating, capable of being moved relative to the shore
- Floating, fixed to the shore
- Non-floating fixed

(10) **Weather Protection**

Covering

(11) **Breakwater**

- Man-made
- Natural
- No Breakwater

(12) **Methodology**

Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

MARINAS
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURES

Features (Check if present)	C O N C E S S I O N E R	COMPARABLES				
<u>Facility Related</u>						
Hotel/Motel						
Restaurant/Bar						
Groceries						
Marine Supplies						
Fuel Dock						
Maintenance Facility						
Sewage Pump-out						
Refuse Receptacles						
Showers						
Laundry						
Hoists						
Transient Berths/Moorings						
Dry Storage						
Trailer Parking						
Fish Cleaning Area						
Telephone Hookup at Berths						
Electrical Hookup at Berths						
Cable TV Hookup at Berths						
Boat Club						
Picnic Areas						
<u>Service Related</u>						
Charter Boat Operation						
Camping						
Swimming						
Water Skiing						
Fishing						
Beach Rentals						
Boat Rentals						
Fishing Equipment						

More feature items may be added as they are observed, i.e. boat cleaning service, hull cleaning and refurbishment, large engine repairs, interior and appliance service, firefighting facilities, and so on.

f. TOUR OPERATIONS

Concessioners provide tours by bus, van, horseback, boat, raft, tram, and other types of vehicles. In addition, there are walking tours in a number of areas. Tours can be of short duration--less than 1 day--or they can last for a week or more. Tour operators usually provide some guide service and may also arrange for meals and overnight accommodations. Given this great variety, this portion of the comparability study will focus on the type of tours generally provided by concessioners in National Parks, that is, guided tours that last less than one day. In addition, these procedures focus on motorized tours only, i.e., excluding, however, all raft trips as well as walking tours. The rate approval for many of these tour services may best be accommodated through another study method, as an example, Method 3 will lend itself well for tour services which do not have comparables readily available.

(1) **Similarity of Operations**

Type of Vehicles should be of the same type. It is not possible to compare tours in different vehicles, e.g., bus, boat, tram, etc., because investment levels, operating cost, and clientele are different.

Guide Service - The provision, or absence, of a guide or narrator is a significant factor.

(2) **Similarity of Market Area/Clientele**

- National
- Regional
- Local

(3) **Length of Tour**

Tours lasting one day or less cannot be compared to tours that last longer. On tours lasting less than one day, the amount of time and distance traveled are significant cost factors.

(4) **Age of Vehicles**

The age and/or appearance of the vehicles should be similar.

(5) **Seasonality**

Number of months required to obtain 75% of the annual volume should be within 2 months + or - for comparables.

(6) **Remoteness**

Distance to major suppliers or supplies, i.e., fuel, parts, labor supply. Comparables should be in the same range:

- Less than 50 miles
- 50 to 100 miles
- Over 100 miles

(7) **Natural Area Type of terrain**

- Mountainous
- Hilly
- Flat

- Water-oriented
- Salt water/brackish
- Freshwater

(8) **Methodology**

Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

TOURS
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURES

Features (Check if Present)	C O N C E S S I O N E R	COMPARABLES			
Facility Related					
Restrooms (aboard vehicle)					
Eating facilities					
Bar					
Public Address System					
Handicapped Facilities					
Glass Bottomed (Boats Only)					
Comfort Related					
Air Ride Suspension					
Reclining Seats					
Air Conditioning					
Vistadome					
Service Related					
Hotel/Motel Accommodations Arranged					
Meal Stops Arranged					
Baggage Accommodations					
Special Activities Included					
Accept Major Credit Cards					
MCO (Miscellaneous charge order/ airline tour order)					
Direct Billing					
Transfer Bus Service					
Bilingual Escort Guides					
Special Escort Guides					
Hospitality Suite or Desk					

Other feature items may be added as they are observed during the comparability review.

g. GASOLINE SERVICE STATION

The services include gasoline sales, emergency and routine services such as tires, batteries, and accessories (TBA), and major repair. Gasoline sales may also be handled through the Simplified Review Of Similar Services Method. See note at end of this subparagraph.

(1) Ownership/Management

Do they have the same type ownership/management structure?

- Oil company ownership leased to independent operator/manager
- Oil company owned and managed
- Independently owned and managed

(2) Type of Service

- Full-service
- Self-service
- Split island

(3) Degree of Competition

Service stations should have at least two competitors to be regarded as a comparable.

(4) Geographical Proximity

Normally, the most comparable facilities will be those that are located closest to the concessioner because of distance from supplies.

(5) Volume of Business

The monthly volume of business is a very important factor in gasoline pricing and may be very hard to obtain from the comparables.

(6) Seasonality

In addition to the volume, the season is also an important factor. Seventy-five percent of the annual volume should be reached within 2 months + or - of the concessioner.

(7) Methodology

Utilizing a spread sheet matching the same type of service offered by those facilities deemed comparable under the above criteria

and the concessioner, assure that the rate structures are compatible for comparing. Considering the extent to which the comparable and concessioner match up with selection criteria and the extra quality worksheets, approve or disapprove the prices and/or discuss with the concessioner, possible changes in his services, or amenities offered to match services, amenities and price.

NOTE: Gasoline prices may be approved utilizing Method 2, Simplified Review Of Similar Services discussed in Paragraph E.2. This simply entails contacting the jobber for the particular brand of gasoline sold by the concessioner to ascertain eight or ten stations in the area which have volume and location characteristics similar to that of the concessioner. Contact the stations to find out their markup on delivered wholesale price (including cost of transportation). The average add-on in cents per gallon then becomes the concessioner's allowable add-on.

GASOLINE SERVICE STATIONS
ADJUSTMENTS TO COMPARABLES
EXTRA QUALITY FEATURE

	C O N C E S S I O N E R	COMPARABLES			
<u>Features (Check if present)</u>					
<u>Facility Related</u>					
Restrooms					
Public Telephone					
Car Wash					
Adjoins Restaurant or Motel					
Adjoins Retail Store					
<u>Comfort Related</u>					
Waiting Room (For customers awaiting auto repairs)					
<u>Service Related</u>					
Trailer/RV Service					
Accepts Membership Road Service					
Provides Free Maps					
Tires, Batteries, and Accessories					
Repair Service Available					
Tow Service Available					
Mechanics Licenses Held					
Open 24 Hours					
Open 7 Days a Week					
Accepts Major Oil Company Card					
Accepts Major Credit Cards					

Other features may be added as they are observed during the comparability review, i.e., vending service, full service, self-service, and so on.

2. Method 2 - Simplified Review of Similar Services

a. DESCRIPTION

This method of rate evaluation may be characterized as a quick review, rather than a detailed study. It consists of a simple comparison of prices between the concessioner's proposed rates on items and services that meet the established criteria for this method and those items and services of selected private businesses. The comparison process is very brief, limited to minimum background information on the available comparative businesses, the price of similar items and services, and the essential information concerning differences in the items and services being considered.

To the extent possible, similar service businesses will be located on non-Federal lands, however, in cases where the only comparative businesses available are so located (such as national parks or national forests) they will be acceptable.

In some cases, a Superintendent may choose to use a screening factor in selecting a similar business, e.g., the presence of a boat mechanic. The park may require the concessioner to have trained mechanics on duty to provide this service. In this case, "Required Training" would be a screening factor rather than a consideration. A business not meeting the screening factor would be eliminated from consideration. However, because basic comparables are not available, most of the factors to be developed by the park, will be used as consideration factors only when selecting the similar services business and when evaluating the comparative value of the rates against the concessioner's rate approval.

Failing one "consideration factor" would not necessarily rule out the business as a usable similar service.

The Simplified Review of Similar Services Worksheet or a similar document will be used in conducting the rate comparison review and to establish the approved rates. The worksheets appear at the end of this explanation.

b. APPLICATION OF THE METHOD

It is anticipated that this simplified review process may be conducted by telephone to known similar service businesses. However, on-site visits are to be encouraged whenever possible, considering administrative constraints.

When the determination has been made to use this method of rate comparison, an inquiry will be made in the nearby, in some cases distant, communities to locate similar businesses. The personal knowledge of the park staff and local business leaders can be utilized to help locate similar businesses

that might provide the same goods and services as those being reviewed for rate approval.

Where possible, three or four similar service businesses which should have two or more competitors each, should be reviewed. Special screening and consideration factors will be established by the Superintendent to help evaluate the similarity of rate values of the businesses being reviewed. (See worksheets). Again, because of the many one-of-a-kind types of items and the unique character of some concession services, it may be found that only one or two similar businesses can be located. In this case, you will use what you have and explain the efforts to locate others in the footnote section.

Concession items and services to be included under the heading "Items and Services" will be related, where possible, to a functional operation such as: recreational equipment rental and services at a small, isolated marina operation. One or more items may be listed for review on a single form. The Superintendent has the flexibility of using this form to adapt to the difficulty in locating similar service businesses and/or similar services. A new form will be used for each concessioner.

Once the "Service Items" and "Proposed Rates" have been listed on the worksheet, the similar service businesses will be queried by phone or in person to obtain their current rates for comparison. In those cases where there is a similar service or item but a distinct difference exists which might affect the price comparison, it will be footnoted to explain the difference. In some cases, this may be grounds for rejecting the rate comparison for this item. (See worksheets that follow).

When the similar service rates have been recorded, an average will be computed to serve as an indicator and comparison with the proposed rates. A recommended rate approval based on the comparison will be entered in the right hand column. An analysis of the data will be recorded at the bottom of the form to briefly describe the extenuating consideration given in making the final rate recommendation.

Subsequent individual rate increase requests that are made during mid-season can be handled quickly by contacting the similar services business to check their current prices and if changes have occurred to warrant an increase it can be quickly approved.

SIMPLIFIED REVIEW OF SIMILAR SERVICES
(WORKSHEET)

Date _____ Analyst _____

Park _____ Concessioner _____ Contract/Permit _____

Screening or Consideration Factors	Concessioner	Similar Service Businesses				Comments
1.						
2.						
3.						
4.						
		<u>Rate Comparisons</u>				
Items and Services	Proposed Rate	Established Rate/Similar Service Businesses		Averq. Rate	Recommended Rate	
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						

Footnotes:

Brief Analysis:

Simplified Review of Similar Services
(Worksheet)

Date _____ Analyst _____

Park _____ Concessioner _____ Contract/Permit _____

Screening or Consideration Factors	Concession	Similar Service Businesses				Comments
		Reservoir	Other	Marina/Store	Other	
1. Length of Season	3 Months	4 Months	3 Mon.	4 Months	5 Months	First two on private property Third on State land Fourth, NPS
2. General Appearance	Very Good	Average	Poor	Average	Very Good	
3. Equipment Condition	New	Old	Old	Good	Good	
4. Size of Business	Very Small	Medium	Medium	Small	Small	

Rate Comparisons

Items and Services	Proposed Rate	(Established Rates of Similar Services)				Average Rate	Recommended Rate
1. Rental Boats 14 ' 10hp, w/ gas	\$10/hour 25/½ day 30/day	\$6/hour 1/ 10/½ day 15/day	\$11/hour 20/½ day 25/day	\$10/hour	2/ \$ 10/½ day	\$9 13 20	\$10 25 30
2. Ski and equipment Skis/Rope/PFD	3/day	4.25/day	2.75/day		5/day	4	3
3. Zip Sled	4/day		2.50/day	3.25/day	3.75/day	3.17	3
4. Fishing Gear (Pole/Lures/ Bait	5/day	4.50/day	5.50/day	2.75/day	5.25/day	4.50	5
5. Canoes PFD	2/hour 5/½ day	1.75/hour	1.50/hour	2.25/hour 5/½ day	2/hour 5.50/½ day	1.87 5.25	2 5

Footnotes:

1/ Gas not provided. 2/ Only had 2 old boats. 3/ Old and poor quality equipment. 4/ PFD not provided-getting out of business.

Brief Analysis: (1) Higher rate recommended because new equipment, better service, higher quality.
(2) Rate not recommended, other services equal in quality and condition.

3. Method 3 - Specified Rate On Authorization

a. DESCRIPTION

This method will probably represent the easiest process for adjusting and approving rates in many situations. Once the contract or permit has been written or amended as described herein, the procedure will be nothing more than that described in indexing, Method 6.

The tasks to deal with in this method are:

- (1) Establishing the initial rate.
- (2) Writing or amending the contract or permit to accommodate the method while very specifically spelling out the exact index to be used.
- (3) Following up on adjusting the rate for Indexing as spelled out in the authorization. Indexing for this method is not to exceed 5 years before reestablishing the rate.

Specified rates on authorization method is intended for use when comparables are not readily available and when dealing with a limited number of services with a simple rate structure. The method should have special value for unique and unusual services such as seaplane rides, some horseback rides, and mountain-climbing schools.

Perhaps the most important factor to consider is that this process should be determined to be administratively advantageous to the Service by (1) reducing the questions about rates that arise each year and (2) reducing the time and money used in approving rates. In many cases the concessioners will favor utilizing this method because it will give them a solid rate that they can plan on without the uncertainties that may be inherent in other rate approval methodologies.

b. ESTABLISHING THE SPECIFIED RATE

The NPS representative making this determination should take advantage of any reasonable means to establish a rate that will be fair, in his/her best judgement, to the visitors and provide a reasonable opportunity for a return to the concessioner. In situations where there is an existing rate that is considered reasonable, then that may be used. In some situations, an economic feasibility study will be needed and in other cases it may require the use of the financial analysis method. The Superintendent may in some instances request assistance from Region, which might in turn request assistance from WASO or DSC.

(1) **New Authorization**

Once the NPS-proposed rate has been established, this can be published in the Fact Sheet or Prospectus as the proposed rate. The Prospectus should ask that those responding specify the rate they propose, and the financial rationale to justify such rate.

Prospectus Language:

Inasmuch as there are no comparable _____ services in the area of _____ National _____, the rates charged shall be those approved in this (contract or permit) and subject to change annually. The maximum approved rate shall be adjusted annually to reflect the rise or fall in the U.S. Department of Labor, Bureau of Labor Statistics' C.P.I. for _____ covering the same period. If the said Consumer Price Index figure for the month of January of the year following the effective date of this contract shall show either a rise or fall from the index figure for the month of January of the preceding year, the maximum rates shall be correspondingly increased or decreased for the succeeding 12-month period, commencing on the 1st day of April, to the nearest (quarter) (half)(one)-dollar figure representing the percentage difference of increase or decrease of the current January Index figure over the preceding year figure. Likewise, similar recalculations of the rates to be used shall be made using the Index for the month of January in each succeeding year. In each instance, the figure shall be compared with the figure of the preceding January, and an adjustment made for the next succeeding 12 months in the manner aforesaid.

The National Park Service proposes (requires) _____ as the rates for the calendar year beginning on the execution date of this (contract or permit). *All prospective operators responding should submit their proposed rates along with financial rationale to substantiate the proposal*. (Words between asterisks are optional)

When this method is to be used, the proposed rate should be considered when evaluating the proposals responding to the Prospectus. This will provide competitive rate proposals, but still not consider them as the major element in the selection process but rather a part of the element of being responsive to the Prospectus. Should the proposals or the best proposal have a rate lower or higher than the NPS proposed rate, then the rate could be determined through negotiation.

Should all of the proposed rates be considered not reasonable, or too low, then the proposals may be treated as any other prospectus where no satisfactory proposals were made.

(2) Existing Operations Where a Fact Sheet Is To Be Issued

When it has been determined that this method will be utilized and a Fact Sheet is being issued, the same basic procedures and Fact Sheet language can be used as was described in "new authorizations". The difference will, of course, be that preferential right will become injected into the negotiating and selection process. As with other points, the existing concessioner who has a preferential right of renewal shall be given the right of first refusal.

(3) Amendment to Contract or Permit

A contract or permit can be amended for the purpose of specifying the rate and utilizing this method. In areas where a contract or permit has 3 or more years before expiration, and when mutually agreeable with the concessioner, the Superintendent may wish to amend the contract or permit.

A contract amendment certainly takes a good deal of effort, especially on the part of the Regional Office staff, and possibly will not be considered by many. In some situations, however, it will be in the Government's best interest to amend the contract and, therefore, should be considered. The area and Regional Office staff will want to work together closely when considering this possibility.

4. Method 4 - Merchandise Pricing

a. DESCRIPTION

Approving prices based on costs for various types of retail stores and categories of goods is a simple solution for approving prices for a wide range of goods that are normally priced by a percent markup, i.e., curios, handcrafts, groceries and general merchandise. This method is not to be applied to restaurants, hotels, transportation, marina operations or other service-related industries where quality of service and amenities are more important factors in approving rates charged park visitors.

This method achieves comparability by using national percentages. Comparability in the Merchandising Pricing Method is also realized by permitting variance from national markon/markup averages where local custom dictates, and by using Method 1 or 2 for unusual items. The use of manufacturers' suggested retail prices also provides comparability.

b. DETERMINING RETAIL PRICES

The grocery store and general merchandise retail industries have their own jargon, i.e., markon, markup, gross margin, gross profit, cost of sales, etc., and some prefer to quote the above in either dollar amounts or percentages. This is very confusing to the person responsible for implementing and/or administering price approvals, particularly if they are not familiar with retail merchandising.

Two closely related terms are markon and markup. The first, markon, is widely used by retailers, and represents the percentage of selling price which is profit. Markup, which is more commonly understood by lay persons, represents the profit percentage which is added to retailer's cost to establish a selling price.

Equivalent markup and markon percentages for each category of merchandise are attached as Exhibit 1. The percentage will be updated periodically. One method of price construction may be selected and the equivalent in terms of the other method is readily available in the adjoining column. The percentages should generally be used.

The two methods of price construction follow:

(1) **Markup Pricing:**

Selling price = Product Cost X (1 + approved markup percentage).

Example: Consider a carton of cigarettes with a product cost of \$4.50. The approved markup percentage of 44.1 is taken from Exhibit 1. What should the selling price be? Selling Price = \$4.50 X (1 + .441) = \$6.48.

(2) **Markon Pricing:**

Operators need to know the percentage of the selling price that is represented by gross profit. Considering the expected volume and product mix, they need to make judgments as to whether the margin is sufficient to allow expected profit and cover expenses, or whether expenses must be pared. An example of margin of profit:

Selling Price	\$6.48
Product Cost	<u>\$4.50</u>
Profit	\$1.98

$\frac{\$1.98}{\$6.48} = .3055$ or 30.6% of the selling price

30.6% of the selling price represents gross profit. 30.6% is also the markon percentage corresponding to 44.1% markup listed for tobacco products in Table 1.

To determine the selling price from approved MARKON percentage:

$$\text{Selling Price} = \frac{\text{Product Cost}}{1 - \text{gross profit \% (expressed in Table 1 as markon percent. Convert to a decimal equivalent.)}}$$

Using the same example cigarett carton, the approved markon percentage looked up in table 1 and found to be 30.6%

$$\text{Selling Price} = \frac{\$4.50}{1 - .306} = \frac{\$4.50}{.694} = \$6.48$$

Exhibit 1 contains equivalent approved maximum markups/markons, so neither party is forced to work with a method that may be uncomfortable.

(3) Application

Example: Suppose a Superintendent selects a grocery item from the shelf and finds the price to be marked \$.75. Table 1 shows an approved markon of 29.9% and markup of 42.7%. Upon request, the concessioner produces documentation to show product cost per unit to be \$.524 and volunteers a markon of 29.9% was used to construct the \$.75 shelf price.

The Superintendent prefers to use the approved markup percentage of 42.7% to verify correctness of price and multiplies the product cost and the markup %. \$.524 (1.427) = \$.7475. The \$.75 shelf price is verified as correct.

Wholesalers will often provide pricing wheels, a circular sliderule type of tool that will read the appropriate price directly for a given product cost and desired gross profit percentage.

c. VARIATION FROM LISTED PERCENTAGE

The percentages for markup/markon in Exhibit 1 are based on nationally published averages drawn from large samples, and represent the upper range of profitability. They should be used, in the absence of good evidence to

the contrary, as maximum allowable percentages. Comparability may also be achieved as follows:

(1) Different items of merchandise within a particular category may be priced above or below the percentage listed in Exhibit 1, providing, the overall result, considering sales volume, does not exceed the markup/markon for the category.

(2) Where retailers in a particular area have a custom of pricing certain items above or below the national markup/markon averages, and it can be documented by contacting retailers in the area, the percentages in Exhibit 1 may be adjusted to conform.

(3) Manufacturers' suggested retail prices should be used when the product has one, either by pre-marking or by a suggested retail price list. However, if local custom is to vary from the suggested retail price, then the local price should prevail. This may result in a retail price higher or lower than if calculated by markup/markon percentages.

(4) Unique items and items that are not marketed in the normal manner and do not fit an item or group of items listed in Exhibit 1 may be priced by using Method 1, Full Review of Similar Services or Method 2, Simplified Review of Similar Services.

d. PRODUCT COST

The following may be included in product cost by the concessioner:

(1) Due to the time value of money, merchandise on hand at the time the wholesaler announces a price change may be revalued to reflect new wholesale costs, and retail prices adjusted accordingly. This must be documented by a current wholesale price list.

(2) Cash discounts need not be deducted from product costs. Such discounts are normally 2% and expressed as 2/10,n/60 (2% discount if paid in 10 days from date of invoice, net due in 60 days) or 2/10 eom (2% discount if paid during the first 10 days following the end of the month). During times of high interest rates some wholesalers may offer 5% prompt payment discounts.

It is possible that a wholesaler may to promote sales, increase prices in order to offer a discount greater than 5% thereby allowing for a higher retail price and enhancement of the wholesaler's product to the concessioner. Discount above 5% should be regarded as a reduction in the wholesale price on which markup is based. If a larger discount is offered it must be reduced to 5% prior to calculating the retail price.

Example: Product cost - \$10.00; 12/10eom. 12% offered discount less maximum allowable 5% discount, equals a 7% price reduction.

Listed product	\$10.00
Less 7% price reduction	<u>.70</u>
=Product cost on which markup or markon may be computed	\$ 9.30

In times of volatile cost of capital, the industry cash discount practice will be monitored to keep the above policy current. It is the intent of this cash discount policy to be consistent with current industry practices.

(3) Documented transportation expenses may be added to the product cost before markon or markup.

The concessioner must produce such documentation upon request. When the transportation is provided by the concessioner, the documentation is more difficult, but nevertheless must be explicit. An example of acceptable documentation is provided at the end of this discussion.

(4) Warehouse charges developed or cost incurred by the concessioner may not be added to the product cost to determine price.

Warehousing as used herein is intended to mean the normal labor and other expenses incurred by the concessioner in handling merchandise, etc., in the concessioner's storage structure and sales outlets. If the concessioner wishes to take advantage of warehousing, expense through:

- Increased sales volume due to lower retail prices
- Revalued merchandise due to documented wholesaler price increases
- Convenience and availability of product.

(5) Volume buying practices by the concessioners allow them to take advantage of discounts offered by suppliers. The NPS views this as an acceptable financial transaction and therefore we should not penalize concessioners for doing so by not allowing them to use the cost that would have been incurred by buying in smaller quantities.

The concessioner will provide the NPS with the supplier's volume price listing to justify the adjusted base to be used in the markup method. The markup should be based upon purchase prices for the quantity

which the business would normally purchase in order to keep the product in stock.

TRANSPORTATION DOCUMENTATION BY THE CONCESSIONER

(SAMPLE)

1. Invoice Documentation.

If it is necessary or desirable for a concessioner to pick up supplies at the wholesaler's dock, the wholesaler will often offer a discount in return for saving delivery costs. The amount of the discount should be stated on the invoice. The stated discount will serve as documentation to support the amount of transportation expense the concessioner claims as product cost.

2. Constructed Transportation Expense.

The objective is to construct as nearly as possible, the actual reasonable expense for transporting each item by the concessioner. Consider the need to find a transportation charge for a dozen eggs. The basic vehicle for this exercise is a truck of 500 cubic feet capacity.

Fixed Expenses

Amortization	\$3,000/year
Insurance	\$1,000/year
Service and Repairs	\$ 260/year
Taxes and License	\$ 240/year

Variable Expenses

Driver	\$9.00/hour
Fuel	\$1.30/gal.
Laborer	\$4.00/hour

Mileage, 20,000/year $\frac{\$4,500}{20,000} = \$0.225/\text{mile}$ fixed expenses

Consider a trip of 170 miles to a supplier.

\$0.23/mile fixed expenses x 170	\$39.10
Driver \$9/hour x 6 hours	\$54.00
Laborer \$4/hour x 1 hour	\$ 4.00
Fuel \$1.30/gal. x 26 gal	<u>\$33.80</u>
Trip Cost	\$130.90

Truck capacity 500 cubic feet

Average 80% full = 400 cubic feet $\frac{131}{400} = .33$

One carton of eggs = 3 cubic feet x .33 = 0.99 carton

30 dozen per carton $\frac{.99}{30} = .03/\text{dozen}$ eggs transportation

5. Method 5 - Competitive Market Declaration

a. DESCRIPTION

Occasionally there are situations that exist in National Park areas where a service offered by a concessioner exists in a highly competitive market. That is, where identical or very similar services are offered by other private enterprises in the immediate vicinity, and the concessioner's location provides no particular competitive advantage. In such situations, the area manager may wish to write a "Competitive Market Declaration," which is an analysis of the situation and a statement that it is in the public's best interest to allow prices to be set in a free market rather than approved by the Service.

The purpose of the "Competitive Market Declaration" is to reduce the administrative burden of rate approvals in situations where, because of competition, the concession must charge comparable rates to survive. It does not relieve the Superintendent of the responsibility to ensure that the concessioner's rates are fair and reasonable.

A competitive market is defined as a marketplace where two or more parties act independently to secure the business of a third party by offering the most favorable terms and/or prices. The "marketplace" may be very small; as in the case of unusual one-of-a-kind items on sale within a major concession merchandising shop; or larger, as in the case of antique sales which may be miles from other antique dealers. The important concept is that if the concessioner's competitive position is not enhanced by his/her location in a park, then his/her pricing must be competitive to secure business and may, therefore, be considered comparable.

The argument has been made that if there is no competitive advantage to a service being offered in the park, then that service may not be "necessary and appropriate" and should not be located in the park. In response, we merely point out that rate reviews are not the place to make that decision, and that field personnel may safely proceed with "Competitive Market Declarations" without reference to a specific service being needed or appropriate.

Another situation where this concept of competitive market may be used is in rate reviews for goods or services where the price is routinely negotiated between vendor and customer. Examples of this would include unique, limited one-of-a-kind items such as art or antiques, and one time services such as banquets served in a concession restaurant. Again, the key element is that the sales price is not enhanced by the vendor's location in a park area.

b. PROCEDURE

The decision to use a Competitive Market Declaration should not be made lightly, as it relaxes controls but not responsibility for rate

reviews. It is required that the Regional Office agree to the use of this method.

The decision-making process should be well documented. This documentation should contain as a minimum a detailed description of the circumstances which justify the declaration; a competitive market, negotiated price, etc.

The documentation should also assess alternative rate approval methods as applied to this particular situation.

The declaration itself is to be included as part of the approved rate schedule. As a minimum, the declaration needs to include a statement to the effect that market forces provide comparable pricing and that the concessioner is permitted to set and change prices without further review. The declaration shall require the concessioner to notify the Superintendent in writing of rate increase changes. The declaration must be reviewed at least annually to ensure that significant changes have not occurred in the marketplace necessitating use of another rate approval method. This review process must be documented. The park may rescind the use of this method if it is felt that the competitive situation has changed.

Example:

Competitive Market Declaration for boat sales by Catfish Marina Services, Incorporated at Waterhole National Recreation Area.

Boat Sales at Catfish Marina

Catfish Marina is an authorized dealer for Glastron and Sea Ray boats, and in addition sells used Sterury rental boats. As a boat sales dealer, Catfish Marina directly competes for customers with the following firms:

- Rainbow Boats
Holioak, Wyoming - 7 miles distance
- Everude Sales and Service
Holioak, Wyoming - 7 miles distance
- Lemon's Leased Boat
Tidewater, Wyoming - 3 miles distance
- Park Boats
1/2 mile east of NRA boundary

As can be observed, the distance between Catfish Marina and its competitors is not great. All of the above firms sell boats in the same class as those offered by the concessioner.

In addition, the selling price of boats is normally negotiated between buyer and seller. The many variables which enter into boat sales price, such as changes in season, interest rates, model year; and intangibles of salesmanship make the application of fixed prices unrealistic.

In consideration of those factors, it is determined that the concessioner's ability to compete in boat sales is not enhanced by the location of Catfish Marina within the Recreation Area. Prices are comparable based upon competitive pressures and negotiation. Our recommendation is to use a competitive market declaration for approving rates for this service.

Superintendent

Date

.....

Example Rate Schedule - Waterhole National Recreation Area

Section V - Marina Services (continued)

Boat Sales

Competitive Market Declaration

It is determined that boats sold by Catfish Marina, Inc., at Catfish Basin, Waterhole Recreation Area are vended in a competitive market. Further, the price charged for boats sold are negotiated between buyer and seller. In consideration of these factors, it is declared that rates being charged by the concessioner are comparable and approved. Catfish Marina, Inc., may price their boat sales competitively without further approval from the National Park Service.

This declaration is for the period January 1, 1983 to December 31, 1983.

(signed)

Superintendent

Date

6. Method 6 - Indexing

a. DESCRIPTION

Index pricing represents an easily-implemented procedure for approving or adjusting concessioner prices on an interim basis. It does not obviate the need for periodic rate approval processes aimed at ensuring both a reasonable opportunity for the concessioner to realize a profit and fair prices for the visitor. Index pricing would, however, reduce the administrative burden on both concessioners and NPS management personnel by eliminating the necessity of more elaborate study each time a price increase is requested by a concessioner.

Index pricing may, perhaps, be best understood by example. Suppose that in April 1978, concessioner XYZ requests a price increase to \$27.50 per night for a double room in his facility. The most recent price for a double room of \$26.00 was approved in January 1977, through a comparability study. The Superintendent refers to a list of price indices which indicate that from January 1977, to January 1978, (used for an example only), lodging while out of town prices have increased by 7.5%. On this basis, the concessioner would be entitled to \$27.95, which is a 7.5% increase over the old price of \$26.00. Therefore, the Superintendent approves the requested price of \$27.50. At the same time, the concessioner requests that the price of his fish platter, established in January 1977, be increased from \$3.50 to \$4.00. The Superintendent determines from the same list of price indices that food away from home prices have increased 8.2% over the period from January 1977, to January 1978. On this basis, the Superintendent denies the requested increase to \$4.00 and approves, instead, an increase to \$3.75.

b. PRICE INDICES

At the heart of the procedure described above is the price index. A price index is a ratio which related prices for specific commodities or groups of commodities to prices in a "base" year. For instance, the CPI for all items for Urban Wage Earners and Clerical Workers for 1967 through 1982 was:

<u>Year</u>	<u>CPI</u>
1967	100.0
1968	104.2
1969	109.8
1970	116.3
1971	121.3
1972	125.3
1973	133.1
1974	147.7

1975	161.2
1976	170.5
1977	181.5
1978	195.3
1979	217.7
1980	247.0
1981	272.3
1982	288.6

This index has been calculated with a base year of 1967. Thus, the series can be read directly as the price level in some subsequent year relative to the base year of 1967. For example, prices in 1973 were 33.1% higher than they were in 1967, or, equivalently, it took \$133.10 in 1973 to purchase goods that cost \$100.00 in 1967

Percentage change in prices (inflation rates) can be calculated from price index simply by dividing the change in the index over some period by the index at the beginning of the period. Thus, the percentage change in prices from 1970 to 1977 was:

$$\frac{181.5 - 116.3}{116.3} = .561$$

or 56.1%

c. APPLICATION OF PRICE INDICES

The Consumer Price Index, For Urban Wage Earners and Clerical Workers (CPI -W) on which the index pricing system is based, is compiled by the Bureau of Labor Statistics of the U.S. Department of Labor. The CPI covers a number of categories that might be useful to us. Certain data are broken down by city and region of the country.

These detailed categories offer Superintendents the ability to refer to price trends in their geographical area for specific product groups. The CPI detail indices for specific products and services offered by NPS concessioners include the following:

<u>NPS Concessioner</u>	<u>Corresponding CPI Index</u>
Restaurants (food services)	Food away from home
Restaurants (alcoholic beverages)	Alcoholic beverages away from home
Lodging	Lodging while out of town
Retail Sales	

Grocery Items	Food at home
Housekeeping	Housekeeping supplies
Clothing	Apparel commodities
Newspapers, magazines, etc.	Reading materials
Sporting goods	Sporting goods and equipment
Souvenirs	Toys, hobbies, and music equipment
Tobacco products	Tobacco products
Personnel care products	Toilet goods and personal care appliances.
Photographic sales	Photographic supplies & equipment
Non-prescription drugs and medical supplies	Non-prescription drugs and medical supplies
Gasoline Sales	
Gasoline, motor oil, coolant and other products	Motor Fuel, Motor Oil, Coolant, and other products
Auto maintenance/repair	Automobile maintenance and repairs
TBA (tires, batteries, accessories)	Automobile parts and equipment
Bus transportation	Intercity bus fare

The CPI and associated indices are computed and available on a monthly basis. The indices are found in a number of Government publications* and are generally available within a three-month lag. Thus, the Index for February is typically available in May. The availability of monthly data makes possible an Index Pricing System with the finest practical time resolution.

*For example, see "Monthly Labor Review," Survey of Current Business," or Federal Reserve Bulletin.

Exhibit 2 is a sample of one of the pages from the monthly report. Upon request, WASO will provide the Regions with a copy of the statistics. As you can see, each page will address the CPI for specific cities and for the Regions under BLS. Each Region is broken down further by population size class as follows:

<u>CLASS</u>	<u>POPULATION</u>
A	1,250,000 and above
B	385,000 to 1,250,000
C	75,000 to 385,000
D	Below 75,000

Select the cities and regions close to the park in question in determining the appropriate CPI to use in the indexing procedures.

Index pricing procedures are to be based on one of the recent applicable pricing methods. Implementation of the system should be straightforward. Instructions and Price Index Worksheets to be used in calculating the proper rate appear at the end of this explanation. When concessioners submit their price increase request, the Superintendent should break out the request by line of business (e.g., lodging, food service, etc.).

The initial application of indexing for a concessioner would involve an update of prices approved by a previous rate approval method. The inflation adjustment would be computed as the percentage change in the relevant index from the month and year of the time the request is made. If the requested percentage increase in the price of the concessioner's product is less than the increase in the index, then the concessioner's request price would be granted. If the percentage of the concessioner's requested price increase is greater than the increase in the index, then the request would not be approved, unless sufficiently justified by the concessioner.

Price increase requests over prices earlier established by indexing rather than a price approval method would be judged on the same basis. The only computational variation stems from the price index reporting lag. The percentage change in the price index should be calculated from the most recently available index at the time the earlier prices were granted, to the most recent index available for the current increase requested.

For example, suppose the price of "food away from home" in the West were:

<u>Time</u>	<u>Index</u>
August 1978	108.8
June 1979	118.8
August 1979	120.3

Assume that the concessioner established a \$3.00 price for his fish platter in August 1978 through a rate approval method. He/she requests a price increase to \$3.25 (an 8.3% increase in July 1979). The most recent price index available is the June 1979 figure of 118.8. This is a 9.2% increase over the index in August 1979, when the rate method was used. Since the concessioner's requested percentage increase is less than the percentage increase in the index, the request is granted and a new price of \$3.25 is approved. If the concessioner's requested percentage increase was greater than the percentage increase in the index, the request would be denied. The percentage increase would be limited to the percentage rise in the index.

Suppose that the concessioner returns with a request to increase the price from \$3.25 to \$3.35 in October 1979. The Superintendent refers to the park records and determines that the last price was established in July 1979 and was based on the price index for June 1979. He therefore, calculates the increase in the index from June to August (the most recent index available) and determines the increase in the index to be 1.3%. Since the requested increase is 3.1% (from \$3.25 to \$3.35) and greater than the increase in the index, the request is denied and the increase is limited to \$3.30.

A price approval method other than indexing is to be conducted within one year following the data that a concessioner price increase was approved which was based on price indexing procedures. This requirement is necessary in order to (1) ensure that concessioner prices do not move significantly out of line when compared to prices in the unregulated economy and (2) preclude the continued use of the more easily-administered price indexing system.

d. LIMITATION OF INDEXING

The index pricing system should be understood to be a method of alleviating the burden of other pricing methods on both concessioner and NPS personnel. It is not a panacea and cannot be used unquestioningly and unqualifiedly in every instance. It will, however, allow concessioner prices to be adjusted more frequently (if need be) in special circumstances with minimal administrative burden.

INDEX PRICING WORK SHEET
INSTRUCTIONS

Complete the required information regarding concessioner, date, location and specific item being priced, then initial the form in the space provided. Determine the price index which best fits the item being priced. If there is no close fit, use the "all items" index and complete the space provided at the top of Column C.

Line 1

Column A: Enter the proposed item price.
Column B: Enter the current month and year.
Column C: Enter the latest CPI for the item.
Column D: Enter the month and year for the latest CPI.

Line 2

If the previous price was established by comparability or other study--

Column A: Enter the previous price.
Column B&D Enter the month and year the previous price was set.
Column C: Enter the CPI during the month and year the old price was set.

If the previous price was established through index pricing refer to the pricing form completed at that time and -

Column A: Enter amount on line 9 of the earlier form.
Column B, C, & D Copy form Line 1, Columns B, C, & D of the earlier form.

Line 3

Column A: Subtract Line 2 from 1
Column C: Subtract Line 2 from 1

Line 4

Column A: Divide Line 3 by Line 2 (3 decimal places).
Column C: Divide Line 3 by Line 2 (3 decimal places).

Compare the amounts on Line 4, Column A and C.

If the amount in Column C, Line 4, is greater than or equal to the amount in Column A, place the figure shown on Line 1, Column A, on Line 9 below.

If the amount in Column A is greater than the amount in Column C, then proceed as follows:

Line 5: Enter the amount of Line 2, Column A.
Line 7: Enter the percent on Line 4, Column C.
Line 7: Multiply Line 5 by Line 6.
Line 8: Add Line 5 and Line 6.
Line 9: Round the amount on Line 8.

Concessioner _____

Date _____

Location _____

NPS Initials _____

Specific Items _____

Line	ITEM PRICE (A)	DATE OF COLUMN A (B)	CPI (C)	DATE OF COLUMN C (D)
(1) Proposed				
(2) Previous				
(3) Line (1) Minus Line (2)				
(4) Line (3) Divided by Line (2)	%			

If Line (4) Column (A) is greater than Line (4) Column (C), see below.
Otherwise, enter requested price on Line (9) below.

(5) Enter amount on Line (2) Column (A).

(6) Enter amount on Line (4) Column (C).

(7) Multiply Line (5) by Line (6).

(8) Add Line (5) and Line (7).

(9) Approved Indexed Price

--

7. Method 7 - Financial Analysis

a. DESCRIPTION

As a last resort, a financial analysis method could be used to approve concessioner rates. This method relies on certain financial statistics used by WASO after a decision is made by the Region and park to request this method be used:

b. PROCEDURE

(1) Appropriate financial target(s); profitability ratio, direct cost percentage, operating cost ratio, or percentage price increase, is (are) chosen.

(2) Together with the price increase request, concessioners will submit the Concessioner Financial Worksheets which will depict the expected impact of the price increase on selected financial variables.

(3) WASO will compare the price increase data to concessioner historical, industry, and other appropriate NPS concessioner data to identify significant deviations.

(4) A number of factors which might serve to justify a higher-than-expected price are examined.

(5) Based on the above analysis, either approve or disapprove the concessioner's price request.

Each of the above five steps are described in detail in separate documents to be used by WASO. If interested, please request from WASO.

F. UTILITY CHARGES

Concessioner rates set under one of the seven approved methods may, under certain circumstances set forth below, require adjustment to allow the concessioner to pass through certain utility charges. This part establishes the procedures for such adjustments.

1. Procedures for Adjusting Comparable Rates

The procedures set forth herein apply only in those instances where the concessioner is to be charged by NPS for utilities (electricity, water, sewer, solid waste) at a rate higher than the comparable utility charge in the private sector. These procedures do not apply when the concessioner purchases all utilities from non-park sources or when the Service charges a comparable

utility rate; normal concessioner comparability rate approval procedures are assumed to reflect such comparable utility costs.

In many cases, the concessioner will elect not to pass on utility charge increases, particularly when they are small in relation to all the costs of doing business. In such instances the documentation and calculations required in this section are not necessary. It must be understood, however, that such decision to request this pass through rests with the concessioner.

a. IN OUTLINE THE STEPS INVOLVED ARE:

(1) The park calculates utility charges based on comparability and on operating cost, selects the higher, and provides the data to the concessioner.

(2) A "base price" for each item or category of goods and services is approved in accordance with regular concession rate approval methods.

(3) The concessioner calculates the total dollar amount by which utility charges based on actual NPS cost will exceed the amount based on comparability.

(4) The concessioner proposes an add-on to each base price and provides calculations to show that the total add-on for all goods and services equals the additional utilities charge identified in step (3).

(5) The Superintendent reviews and adjusts or approves the add-on and the resulting final rate schedule.

(6) If the concessioner feels the resulting price structure would cause undue competitive harm, the case is dealt with as a utility charge exception, as explained in Paragraph 2 below.

(7) At the end of the year actual results are compared to start of the year projections and significant variations reflected in the subsequent year's adjustment.

b. DETAILED EXPLANATION OF EACH STEP:

(1) **Calculating Utility Charges**

The procedures for calculating both actual and comparable utility charges are outside the scope of the Concessions Manual. Refer to Special Directive 83-2 for procedures. Whenever possible, however, comparable utility charges for comparison should be taken from the same locales as are used for concessioner rate comparables.

Notification of utility charges increases will be provided the concessioner 60 days in advance of the effective date. A request for adjustment of visitor prices or for a utility charge exception must be submitted to the Superintendent within 15 days and must be acted upon by NPS within 45 days of the notification.

Notification of all utility charge increases higher than comparability should be provided the concessioner at the same time and far enough in advance of the main visitor season that only a one time yearly adjustment of prices to the visitor will be required.

(2) Establish Base Price

As before, rate schedules may be expressed in terms of unit price, markon, markup or other appropriate measure, add-ons would then be expressed in compatible units.

(3) Documenting Additional Utility Charge Impact

This will be done by the concessioner multiplying the difference between operation cost and comparability times anticipated usage.

(4) Requesting-Rate Adjustments

If the concessioner decides to request passing through the additional utility costs to park visitors he/she is to provide the Superintendent with a proposed adjusted rate increase schedule. The schedule is to clearly show:

- (a) Past unit sales or sales volume for goods and services to be adjusted.
- (b) Current comparable approved rate, markon or markup percentage.
- (c) Estimated units or dollar volume to be sold.
- (d) Amount of add-on shown as either a dollar amount or percentage.
- (e) Adjusted rate shown as either a dollar amount or percentage.
- (f) Estimated additional revenue
- (g) An explanation if a decrease in units or volume sold is to occur.

The table that follows illustrates the above procedure.

PROPOSED CONCESSIONER RATE ADJUSTMENT
TO RECOUP
\$10,000 ADDITIONAL UTILITY CHARGES
WHERE UTILITY OPERATING COSTS ARE HIGHER
THAN COMPARABLE UTILITY COSTS

Prod./Svs. Adj.	Units or Dollar Vol. (\$) Sold Last Year	Comparable Appvd. Rate Dollar Amt. Or Markon %	Estimated Units or Dollar Vol. to be sold	Amt of Add-on Dollar Amt. or Markon %	Adj. Rate Dollar Amt. or Markon %	Est. Addit. Reven.
Rooms (Units)	8,000	50.00	8,000	.75	50.75	\$6,000
Brkfst Buf.(Units)	9,200	3.75	*8,000	.25	4.00	2,000
Sandwiches(Units)	5,000	2.85	5,000	.15	3.00	750
Tobacco. Prod.	\$100,000	30.6%	\$100,000	.4%	31.0%	400
Postcards	\$ 4,000	50.0%	\$4,000	1.0%	51.0%	40
Groceries	\$30,000	29.9%	\$30,000	2.0%	31.9%	600
Boat tours(Units)	3,500	4.00	**3,000	.10	4.10	300
						\$10,090

* Past History indicates approximately a 12% sales resistance when prices are increased by 25%. (Note: perhaps the rate change should be further reconsidered).

** Boat dock will open one week later next season.

(5) **Reviewing Adjusted Rate Increase Schedule**

The schedule is to be reviewed by the Superintendent to assure:

(a) Accuracy of calculations

(b) Reasonableness of projections.

(c) If the add-on for any price exceeds 15 percent of the base price the concessioner should first be requested to spread the add-on over more items or classes of merchandise. Only if this is not practical should an exception for utility charges be considered.

(6) Ease of monitoring revenues generated as a result of the adjustment.

(7) Goods and services adjusted are well balanced so that a wide range of visitors participate in the adjusted rates.

If the Superintendent does not agree with the proposed adjusted rates he/she should discuss these concerns with the concessioner. Differences which cannot be resolved will be treated as an appeal and referred to the Regional Director in accordance with Paragraph D. 2., Appeal Process.

After an agreement has been reached as to the goods and services to be adjusted and the amount of increase, the Superintendent approves the new rates by showing the amount of add-on on the concession's previously approved Rate Schedule and provides the concessioner and regional office with a copy. The amount of gross receipts as a result of the add-on may be excluded from the concessioner's franchise fee calculation.

Copies of all concessioner rate increase schedules will be forwarded to WASO (ATTN: Concessions Division) for information.

2. Utility Charge Exception

A utility charge exception may be applied when the utility cost add-on is so high that consumer resistance begins to occur. At this point, higher item prices are offset by reduction in the number of items sold. The visitor suffers excessive prices and the concessioner suffers lost current sales and lost repeat business. There is no hard and fast rule as to when resistance might begin; there will be differences according to the types of goods and services involved, the type of clientele, and the part of the country. The sales mix of the concessioner will greatly affect the flexibility with which increases can be applied.

The utility charge exception procedure may be used when charging actual costs for utility services would create an infeasible financial situation and would frustrate the ability of NPS to carry out its statutory responsibilities to preserve and protect areas of the National Park System and to provide for their use and enjoyment by the public.

Authority to approve reduction of utility charges on the basis of a utility charge exception is reserved to the Regional Director. The request procedure will parallel that set forth in Paragraph D. 2 "Appeal Process." The Superintendent's forwarding recommendation should include discussion of the guidelines which are relevant to that situation. The Regional Director's approval for a utility charge exception is valid for only one year. Additional requests for exception must be made by the concessioner on an annual basis.

The following guidelines will apply:

a. As a general rule, price increases of 15% or less should not create a undue competitive situation.

b. Add-on must be spread over as wide a range of goods or services as possible, thus reducing the per item increase. It is not acceptable to

concentrate price increases in a narrow range of items, to produce an artificial need for the utility charge exception.

c. Items on which the manufacturer has printed a suggested resale price are not amenable to sale above that price.

d. Low profit, high dollar volume merchandise such as gasoline is not amenable to large increases.

e. Merchandise prices approved under a Competitive Market Declaration should not be subject to add-on for utility rates.

f. Price increases based on utility charges which occur about the same time as increases based on "normal" market comparability may have a combined effect which creates consumer resistance. In such circumstances, it may be prudent to limit the combined increase to 20% at one time and phase the remaining portion of the utility charge increase.

g. During the first year of implementation of the new utility price policies, a temporary utility charge exception may be necessary due to the late publication of directives, due to large "catchup" increases in comparability based utility costs when these have not been adjusted for a long period, or due to the fact that the concessioner's rates for the forthcoming season have been widely publicized. During the implementing period only, utility charge exceptions may be considered where large increases result only from increased comparability utility charges. Each such case shall be considered on its individual merits. Action by the Regional Director may include delay or phasing of the full rate increase. The implementing period will be considered to end on October 1, 1984. Thereafter, this sub-paragraph will no longer apply.

3. Monitoring

The following procedures are to be taken by the Superintendent and concessioner to assure that the results of adjusting rates for goods and services approximate the amount required to recoup the additional utility charges.

The concessioner, using sales records, invoices, inventory records and other appropriate reports is to provide the Superintendent with documentation showing the results of rate adjustments and the added cost based on the actual amount (gallons, kwh, etc) of utility consumed. The table below illustrates the necessary documentation.

DOCUMENTATION

<u>Products/Svs.Adj.</u>	<u>Projected</u>	<u>Actual</u>
Rooms	\$ 6,000	\$ 6,375.00
Breakfast Buffet	2,000	2,625.00
Sandwiches	750	930.00
Tobacco Products	400	418.00
Postcards	40	40.00
Groceries	600	800.00
Boat Tours	300	310.00
Added Revenue	\$10,090	\$11,498.00
Added Utility Costs	10,000	10,300.00

Summary:

Actual additional revenue generated	\$11,498.00
Actual additional utility charges	10,300.00
Amount to be recouped/(Deducted)	\$(1,198.00)

a. MINOR DIFFERENCES

After utility costs and rate adjustments are reconciled any difference, plus or minus, of less than 5% of additional utility costs will be ignored.

b. SEBSEQUENT ADJUSTMENTS

The above Documentation shows that the concessioner adjusted rates generated \$1,198 more than actual utility charges. Since the difference (12%) is greater than 5% of additional utility costs, the add-on to comparable rates is to be adjusted downward by \$1,198 the following year. If the difference between additional sales generated and actual utility costs were less than 5%, the difference would be ignored.

Reconciliation should be done at the end of the prime operating season or at other times agreeable to both parties but prior to the next rate increase based on comparability. This should be done well in advance for seasonal operations so that adjustments for operating utility costs over comparable utility costs can be represented in the concessioner's rate schedules provided the public and other advertising media.

If during the year the concessioner believes, based on past and current records, that the adjusted rates may result in a substantial shortage or excess of revenues, he/she should recommend changes to the Superintendent that can be taken early that would bring the recouped revenue within the range of what is required.

Gross Profit Margins Markon and Markup Percentages:

CONVENIENCE TYPE STORE

<u>ITEM</u>	<u>MARKON %</u>	<u>MARKUP %</u>
Tobacco Products	30.6	44.1
Beer/Wine/Liquor	28.2	39.3
Soft Drinks	31.6	46.2
Groceries, General & Canned Goods	29.9	42.7
Fast Foods	43.5	77.0
*Milk & other Dairy Products	17.3	20.9
Confectionery Products	36.5	57.5
Health & Beauty Aids	35.7	55.5
*Baked Goods	27.5	37.9
Other Non-Food Items	39.2	64.5
Snack Foods	36.5	57.5
Periodicals	20.6	25.9
Meat & Deli	33.0	49.3
Services	54.5	119.8

Exercise caution when verifying local market prices. Many convenience stores sell milk and bread at or below cost to build traffic in their stores. (Source SCW Industry Report).

RETAIL OPERATION

<u>ITEM OR GROUP OF ITEMS</u>	<u>MARKON %</u>	<u>MARKUP %</u>
Female Apparel-General	49-53	96-113
Jackets, Casual & all Weather Coats	50	100
Sportswear	53	113
Male Apparel-General	48-52	92-108
Coats, Jackets, Rain Coats, Slacks	51	104
Sport Shirts	53	113
Sweaters, Active Sportswear	52	108
Footwear	50	100
Costume Jewelry, Small Leather Goods	51	104
Cosmetics, Toiletries, Drugs	41	69
Stationery, Greeting Cards, Post Cards	50	100
*Books, Maps & References	40	67
Toys	43	75
Sporting Goods	45	82
Housewares, Kitchen Utensils,		
Glassware	48	92
Photographic Supplies, Film	26	35
Developed Slides	50	100

*Prices are usually established by the publisher and printed on the material as the retail price and should not be exceeded.

GIFT AND CRAFT SHOPS

	<u>MARKON %</u>	<u>MARKUP %</u>
Gifts	45-55	82-120
Crafts	50-55	100-120
Photo	45-55	82-120

Individual hard to get, precious metals and stones, limited or one-of-a-kind items, may justify a higher rate but should be done only on an item-by-item basis.

Information in Table 1 was taken from "Merchandising and Operating Results for Department Stores and Speciality Stores" and "Convenience Store News" and owners of retail stores.

Percentages are periodically updated. Prior to use contact Region for current percentages.

Consumer Price Index for urban wage earners and clerical workers: Selected areas, selected items

December 1977=100 unless otherwise noted

Area <u>1/</u>	Other index base	Aug. 1982	Mar. 1983	Food away from home			July 1983	Aug. 1983
				Apr. 1983	May 1983	June 1983		
U.S. city average.	1967	311.8	319.7	321.3	321.9	322.5	323.0	324.3
Anchorage, Alaska.	10/67	-	296.7	-	297.5	-	298.9	-
Atlanta, GA.	1967	313.1	-	321.6	-	322.7	-	324.2
Baltimore, Md.	1967	-	328.3	-	336.2	-	337.0	-
Boston, Mass.	1967	-	277.1	-	278.3	-	286.7	-
Buffalo, N.Y.	1967	296.5	-	280.7	-	281.1	-	283.0
Chicago, Ill. N.W. Ind. . . .	1967	291.3	299.4	300.3	298.8	298.8	298.8	298.8
Cincinnati, Ohio-Ky. Ind. . .	1967	-	303.6	-	306.5	-	304.3	-
Cleveland, Ohio.	1967	309.7	-	317.0	-	321.7	-	335.0
Dallas-Fort Worth, Tex. . . .	1967	331.2	-	350.8	-	350.8	-	357.2
Denver-Boulder, Colo.	1967	-	316.7	-	321.0	-	326.4	-
Detroit, Mich.	1967	281.9	285.4	285.4	283.0	282.0	282.8	283.0
Honolulu, Hawaii.	1967	298.9	-	313.8	-	312.5	-	312.4
Houston, Tex.	1967	368.0	-	373.2	-	377.1	-	376.9
Kansas City, Mo. Kans. . . .	1967	309.3	-	313.2	-	316.3	-	321.0
L.A.-Long Beach, Anaheim, Cal.	1967	308.2	319.1	319.2	320.1	322.7	323.3	323.9
Miami, Fla.	11/77	-	173.6	-	174.1	-	174.2	-
Milwaukee, Wis.	1967	-	332.9	-	334.2	-	334.9	-
Minneapolis-St. Paul, Minn-Wis.	1967	339.3	-	359.6	-	356.9	-	359.7
N.Y., N.Y.-Northeastern N.J. .	1967	302.3	307.7	310.2	312.2	312.1	311.9	312.7
Northeast Pennsylvania. . . .	1967	-	271.3	-	273.8	-	276.9	-
Philadelphia, Pa.	1967	385.9	388.8	392.5	393.0	396.9	399.1	402.7
Pittsburg, Pa.	1967	318.2	-	328.5	-	329.2	-	329.6
Portland, Ore.-Wash.	1967	-	325.8	-	325.6	-	331.0	-
St. Louis, Mo.-Ill.	1967	-	296.9	-	297.9	-	299.5	-
San Diego, Calif.	1967	-	405.8	-	408.9	-	410.3	-
San Francisco-Oakland, Cal. .	1967	298.4	-	305.6	-	306.2	-	312.0
Seattle-Everett, Wash.	1967	-	304.8	-	305.7	-	311.8	-
Washington, D.C.-Md.-Va. . .	1967	-	321.8	-	324.5	-	321.1	-

Region 2/

Northeast.	150.1	-	154.1	-	155.0	-	156.2
North Central.	148.0	-	151.8	-	151.5	-	152.3
South.	152.7	-	158.2	-	159.2	-	159.3
West.	156.2	-	161.9	-	162.9	-	164.1

Provided as sample only. Contact Region for current statistics.

CONCESSIONER REVIEW PROGRAM

A. LAW

1. P.L. 89-249
Section 5.

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits*** to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

2. Occupational Safety And Health Act (OSHA):

In accordance with the provisions of the OSHA Act of 1970 and the NPS Safety and Occupational Health Policy, it is the responsibility of each concessioner to provide a safe and healthful environment for all its employees and visitors.

B. REGULATIONS

CFR 36-Part 5 Commercial and Private Operations
5.10(b)

Eating, drinking or lodging establishments. Such establishments shall be maintained and operated in accordance with the rules and regulations recommended by the U.S. Public Health Service.

5.10(c)

The Superintendent shall have the right to inspect such establishments at reasonable times to determine whether the establishment is being operated in accordance with the applicable rules and regulations and in accordance with the provisions of the permit.

Special regulations are prescribed for specific park areas throughout the CFR. These specific regulations may amend, modify, relax or be more stringent than those listed above.

C. POLICY

Management Policies Manual, Chapter VIII
Concessioner Review Program

The primary goal of the Concessioner Review Program is to ensure visitor services and facilities offered by concessioners are satisfactory. Evaluations of concession facilities and services will be conducted to assure park visitors are provided quality services which are safe, sanitary, and attractive, at levels they would expect from the private sector operating outside NPS areas. Evaluation results will serve as a management tool for assuring adequate facilities and services and will be the basis for management to continue or terminate a concession authorization, as well as to determine whether a concessioner should be granted a right of preference for renewal.

D. INTRODUCTION

To accomplish these objectives, the Concessioner Review Program consists of two subprograms: 1. Operational Performance Program and 2. Contract Compliance Program. The Concessioner's Annual Overall Rating combines both the Operational Performance Rating and the Contract Compliance Rating. The Review Program shall be used to document the positive as well as the negative aspects of a concession operation.

The Review system is set up so that the operational/contract compliance evaluation rating year begins no later than October 1 and ends not later than September 30. This 12 month period is being used so that all concessioners' Operational Performance Reviews will be coordinated Systemwide. It also allows the parks or areas one month to finalize and transmit their reports to the Regional Office by November 1. The Regions will then have two months to review the reports and submit the necessary documents to WASO by December 15.

1. Operational Performance Program (formerly: Concession Evaluation Program)

The Operational Performance Program provides a systematic method for determining quality, safety and sanitation of visitor services on a periodic and annual basis using established standards.

The Operational Performance Program is explained in detail in Chapter 20, of this Concessions Guideline.

2. Contract Compliance Program

The Contract Compliance Program requires an annual review of each section of the concessioner's contract/permit to identify, document and evaluate those performance elements which affect adherence to contract provisions and maintenance or operating plans.

The Contract Compliance Program is explained in detail in Chapter 22, of this Concessions Guideline.

E. PROGRAM RESPONSIBILITIES

1. WASO: The Washington Office is responsible for the overall program as follows:

- a. Establish and revise policy, procedures and standards as required.
- b. Develop and maintain a Servicewide monitoring program for the timely collection, analysis and synthesis of completed reports.
- c. Provide the necessary training to ensure program effectiveness, efficiency and adequacy.
- d. Provide overview of annual reports to assist the parks and Regions in meeting the program's requirements and assuring that the program is being administered consistently throughout the Service.

2. Regional: The Regional Office is responsible for the implementation and administration of the program as follows:

- a. Provide uniform regional interpretation and field implementation of the total Review Program including timely submission of reports and communication to WASO.
- b. Provide field monitoring, training and assistance.
- c. Provide coordination for technical and professional assistance by WASO and Regional Office for correction of safety, health and other major deficiencies and for dealing with non-compliance.
- d. Coordination of the program and reporting functions between WASO and field areas.
- e. Notify WASO of less-than-satisfactory concessioner performance.

f. Make final determination on appeal of concessioner regarding its annual overall rating.

g. Make final determination on termination of contract.

h. Approve modification of operational performance standards, where required, to meet the special needs of a particular park.

3. Park/Area: The park/area is responsible for the direct field implementation and execution of the entire Review Program to ensure fulfillment of requirements of the concessions contract or permit (including the annual operating plan and maintenance plan) as follows:

a. Conduct required evaluations and followup action as needed.

b. Timely submission of completed annual review reports to the Regional Office.

c. Meet periodically with the concessioner to discuss goals, services to be rendered and standards to be met.

d. Recommend suggested improvements for the Review Program to the Regional Office based on field experience.

e. Advise the Regional Office of special concession problems including those which cannot be resolved at the park level. This includes immediate notification of less-than-satisfactory performance.

f. Assign the Annual Overall Rating, Operational Performance Rating and Contract Compliance Rating.

g. Provide the Regional Director with comments and related correspondence associated with a concessioner's appeal on annual overall rating.

h. Recommend to Regional Director termination of concession contract or permits with annual gross receipts in excess of \$100,000 or more and a term of 5 years or more in accordance with policies and guidelines established in Chapter 5 Paragraph D.2.

i. Make final determination on termination of permits under \$100,000 annual gross and less than 5 year term.

4. Concessioner: The concessioner is responsible for monitoring the operation to ensure fulfillment of the requirements of the contract/permit (including the annual operating plan and maintenance plan) as follows:

a. Provide highest quality of services/facilities.

b. Discuss with the Superintendent goals, services to be rendered, and standards to be met.

c. Conduct its own quality control program to include frequent self evaluation. This constant process creates a positive state of mind, which will result in a higher level of service to the visitor.

d. Seek public input by means of periodic information gathering and discuss results with the Superintendent.

F. ANNUAL OVERALL RATING

After the Superintendent completes the Operational Performance Rating and the Contract/Permit Compliance Rating in accordance with Chapters 20 and 22 of this Concessions Guideline, he/she will complete the Annual Overall Rating (Form 10-631). This form requires entry of the operational and contract compliance rating followed by assignment of the overall rating. For a concessioner to receive an Annual Overall Rating of Satisfactory both the Operational and Contract Compliance ratings must be Satisfactory.

The NPS Concessioner Annual Overall Rating (Form 10-631) includes space for narrative comments, use of which is mandatory. The narrative should highlight strong and/or weak points of the concession, record problems or issues which require solution, and explain, if appropriate, why the assigned Annual Overall Rating may appear different from the ratings assigned in subordinate segments of the program. Where the rating assigned meets the criteria for possible termination as set forth in paragraph G below, the narrative shall include recommendation for or against such termination, with justification. This single narrative replaces the narrative previously required with the Concession Evaluation Program.

After the Superintendent has determined the Annual Overall Rating and prior to transmitting the written report to the concessioner, the Superintendent or his designated representative is required to provide to the concessioner the opportunity to personally meet for a review of the annual overall rating, a discussion of any unresolved problems, and a general review of the status of the concession operation.

The Superintendent and concessioner (to signify receipt of rating) are to sign and date, if physically possible the Annual Overall Rating (Form 10-631) and a copy is to be given to the concessioner. (If signature of concessioner is not possible, the concessioner should be sent a copy by certified mail.)

G. DISPOSITION OF UNSATISFACTORY AND MARGINAL RATINGS

When a concessioner's Annual Overall Rating is Unsatisfactory for a given year, or Marginal for two consecutive years, it constitutes grounds for termi-

nation of the contract/permit and/or means that the concessioner is not entitled to a right of preference in the renewal of its contract or permit. In such cases, the Regional Director (or Superintendent for those permit/contract that have a term of less than 5 years and gross receipts do not exceed \$100,000) shall make a careful review of supporting documents, and determine whether there is justification for such actions. If so, he/she will initiate termination proceedings for the contract or permit authorization as set forth in the contract.

In Marginal rating situations, the Superintendent shall formally advise the concessioner when the first such rating is given that, if the next Annual Overall Rating is Marginal, the facility/service will be considered Unsatisfactory with no right of preference in renewal and that the contract/permit will then be subject to termination.

H. DISTRIBUTION OF FINAL REPORTS

1. To Concessioner: At the end of the rating year, September 30, the Superintendent is to advise the concessioner, in writing, of its Annual Overall Rating. This written report should outline both the operational and contract compliance aspects for the year and copies of the following should be included as part of the written report.

a. NPS Concessioner Annual Overall Rating (Form 10-631)

b. Concession Operational Performance Report (Form 10-629) with the following attached: Summary Of Periodic Operational Ratings (Form 10-627), Summary of Periodic Food Service Sanitation Rating Scores (Form 10-622), and Safety Report.

c. Contract Compliance Report (Form 10-630)

2. To Region: The following copies are to be sent by the park to the Regional Director by November 1 of each year.

a. NPS Concessioner Annual Overall Rating (Form 10-631) with mandatory narrative included.

b. Concession Operational Performance Report (Form 10-629) with the following attached to this report.

Summary of Periodic Operational Ratings (Form 10-627)
Summary of Periodic Food Service Sanitation Rating Scores (Form 10-622)
Comprehensive Safety Report

c. Contract Compliance Report (Form 10-630)

d. Any other forms requested by the Regional Director.

3. To Waso: The following copies are to be forwarded to WASO by the Region by December 15 of each year.

a. NPS Concessioner Annual Overall Rating (Form 10-631) with mandatory narrative included.

b. Concession Operational Performance Report (Form 10-629) with the following attached to this report.

Summary Periodic Operational Ratings (Form 10-627)
*Periodic Food Service Sanitation Rating Scores (Form 10-622)
*Comprehensive Safety Report

c. Contract Compliance Report (Form 10-630)

*Send to WASO only when ratings are Marginal or Unsatisfactory.

I. APPEAL PROCESS

In situations where a concessioner is not satisfied with the Annual Overall Rating assigned by the Superintendent, the concessioner may appeal to the Regional Director.

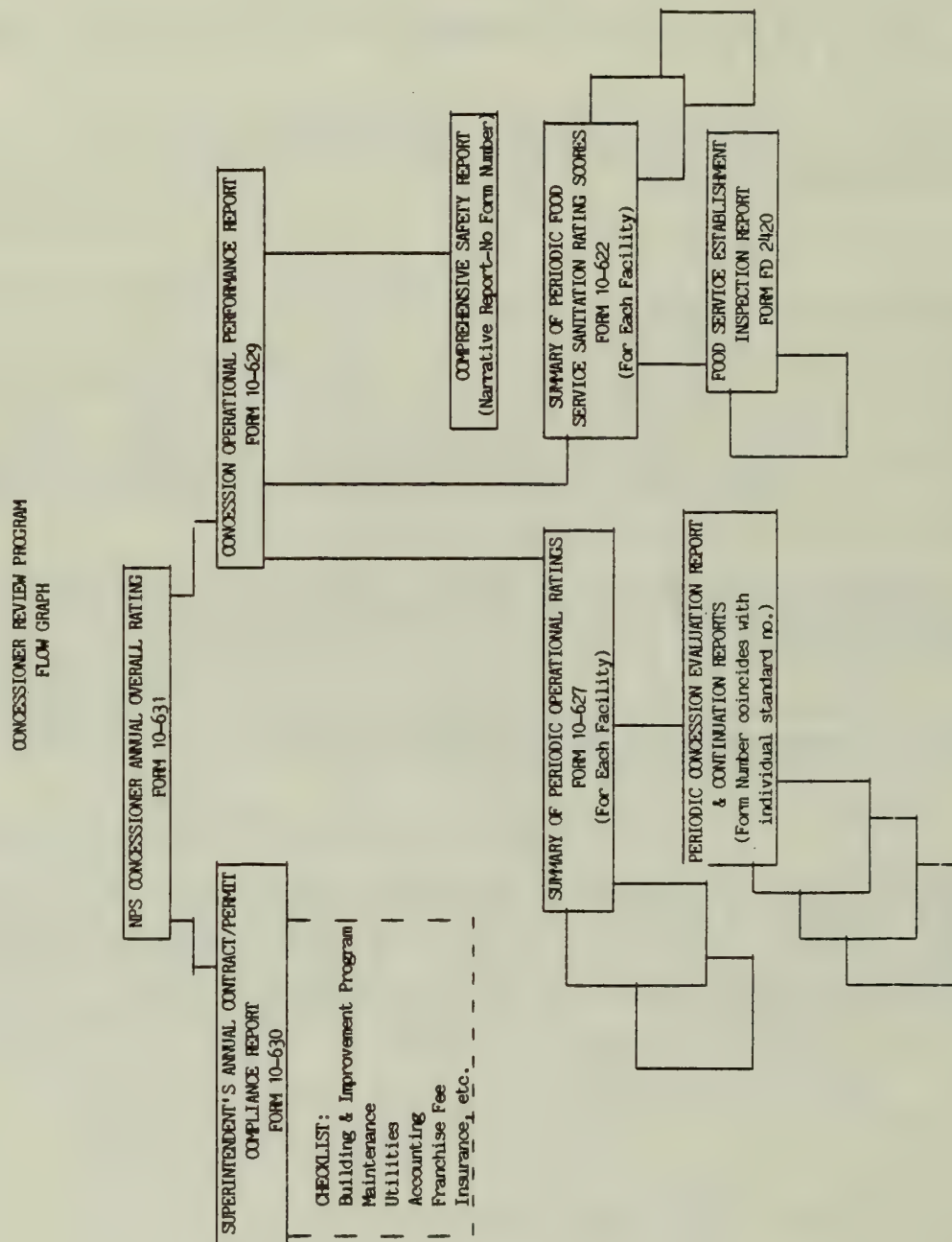
The appeal shall be in the form of a letter, through the Superintendent setting forth a statement of the problem and whatever support material the concessioner feels is appropriate.

Upon receipt, the Superintendent will forward the appeal to the Regional Director along with his comments and related correspondence. A final determination will be made by the Regional Director.

J. FORMS USED

For the sake of clarity a flow graph of forms and form numbers used in the Concessioner Review Program is provided as Exhibit 1 and a copy of the NPS Concessioner Annual Overall Rating (Form 10-631) is provided as Exhibit 2. Copies of all standards and forms used in the Operational Performance Program are located at the end of Chapter 21. The Contract Compliance Checklist (Form 10-630) can be found at the end of Chapter 22, Exhibit 1.

FLOW GRAPH



SAMPLE - NPS CONCESSIONER ANNUAL OVERALL RATING - FORM 10-631

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Form 10-631
(6/82)

NPS CONCESSIONER ANNUAL OVERALL RATING

Region _____ CONCID XXXX000
Park Anywhere Nat'l Park
Concessioner U. S. Concessions Co.

Contract/Permit No. 2222-3-1111
Date 10-12-82
Year of Operation 1982

Operational Performance Rating - Satisfactory
(Satisfactory, Marginal or Unsatisfactory)

Contract/Permit Compliance Rating - Satisfactory
(Satisfactory, Marginal or Unsatisfactory)

Annual Overall Rating Determination: Satisfactory
(Satisfactory, Marginal or Unsatisfactory)

.....
.....
Annual Overall Narrative Assessment and Comments on the Concessions Contractual Obligations and Operational Performance for the year.

Concessioner has shown increase interest in house-keeping and sanitation of his operation as indicated in his ratings. The inspection was conducted and deficiencies found were corrected prior to heavy visitor season. Concessioner was in compliance with contract provisions. Safety inspection reflected no visible deficiencies. This concession operation because of its improvements is an asset to the park.

J. Doe 12-82
Superintendent's Signature Date

J. Smith 12-20-82
Concessioner's Signature to signify receipt of rating Date

CONCESSIONER REVIEW PROGRAM - OPERATIONAL PERFORMANCE

A. GENERAL

The Concessions Operational Performance Program (formerly called the Concessions Evaluation Program) establishes operational standards for facilities and services afforded the public, a systematic method for determining their performance level on a periodic and annual basis, through comprehensive evaluations of each facility/service and permits concessioners the opportunity to correct deficiencies without being unfairly penalized. It also spells out specific responsibilities for all National Park Service management levels.

The standards established for each type of facility or service (operation) are composed of distinct elements which are pertinent to satisfactory performance. These elements are classified Major-First Priority (A), Second Priority (B), and Minor-Third Priority (C) based on the degree of their importance, from a visitor and/or employee's well being and enjoyment standpoint.

Whenever there is a conflict between the standards contained herein and any applicable existing or newly promulgated regulation(s) the latter will prevail and will be considered a part of the evaluation criteria under this program.

Conformance to the standards is measured periodically through a comprehensive evaluation and follow-up on each individual facility or operation authorized, based on the standards contained herein. Facilities and operations are rated for each period using the rating criteria set forth on page 7, of this Chapter except for Food Service Sanitation and Safety and Occupational Health which are rated in accordance with the procedures in Standards I and II located in Chapter 21, as Exhibits 1 and 2.

At the end of the year, the periodic operational ratings for each facility or service are summarized on the Summary of Periodic Operational Ratings Form 10-627 and an average periodic rating for the year computed. Such average ratings are then transferred to the Concession Operational Performance Report Form 10-629 and an annual average rating for all like facilities or operations calculated.

The final step in this operational evaluation process is to rate a concessioner's operational performance overall for the year. This annual overall concession operational rating is made by the Superintendent after a careful review of the factors listed on the Concession Operational Performance Report (Form 10-629) together with all supportive data. Following this review, the Superintendent assigns an Annual Operational Performance Rating of either "Satisfactory," "Marginal" or "Unsatisfactory." Where such word rating appears to be inconsistent with the annual numerical ratings assigned to the various

facilities/services, the reason for this is to be fully explained in the narrative segment of the NPS Concessioner Annual Overall Rating (Form 10-631).

Samples of the forms needed to conduct operational evaluations under this program are provided in Chapter 21, and their use is explained in the following detailed procedures.

B. CLASSIFICATION EVALUATION AND RATING PROCEDURES

Set forth below are the deficiency classification criteria and detailed evaluation and rating procedures to be used in conducting a concessioner's Operational Performance Evaluation.

1. Element Classification

Elements on the Periodic Concession Evaluation Report forms have been classified as follows:

a. MAJOR

First Priority (A) conditions or practices which have the potential for, or exert a significant impairment to the services essential to the well-being and enjoyment of visitors and/or employees.

Second Priority (B) conditions or practices which have the potential for, or exert a moderate impairment to the services essential to the well-being and enjoyment of visitors and/or employees.

b. MINOR

Third Priority (C) conditions or practices which have a potential for, or exert an impairment to the visitor and/or employee services which may result in inconvenience to such individuals.

2. Deficiency Correction Criteria

Deficiencies identified during an operational evaluation shall be corrected in accordance with the following time frames, provided that the correction period for Major deficiencies can be reduced or extended by the Superintendent when warranted by extenuating circumstances:

Major (A and B items) 15 days.

Minor (C items) Next routine operational performance evaluation.

It should be understood that A type deficiencies are more serious and may take longer to correct than what is desired. However, so as not to unfairly

penalize the concessioner by downgrading for not correcting the deficiency within a shorter period (as discussed below), the correction time frame assigned for A and B type deficiencies is the same.

When the concessioner fails to correct major (first and second priority) deficiencies within the correction period established by the Superintendent, the periodic rating shall be downgraded one (1) point. In addition, the Superintendent may, when circumstances warrant, also take one or more of the following actions:

a. Pursuant to 36 CFR, 2.6(a), close, by posting, all or part of the area of a concessioner's operation when necessary for the protection of the area or the safety and welfare of persons or property.

b. Not approve a specific facility's price increase request(s) until corrections are made.

c. Take other appropriate administrative action in direct relationship to the severity and/or magnitude of the problems.

If during a periodic operational evaluation a deviation from the standard is found but is not prevalent in other like services, facilities or operations in the park or area operated by the concessioner, the service facility or operation may be temporarily discontinued by the Superintendent, if warranted under 36 CFR 2.6(a), until the deficiency is corrected. In such instances, the periodic rating need not be Unsatisfactory for this action to be taken.

C. EVALUATION

1. Personnel. All periodic operational evaluations other than those for the Safety and Occupational Health and Food Service Sanitation areas shall be conducted by NPS employees who have been designated by the Superintendent. Only NPS personnel who have received training in the proper use of the Concession Operational Performance Program may establish the periodic rating.

At least one annual comprehensive Safety and Occupational Health evaluation shall be conducted by a qualified Safety Officer. Food Service Sanitation evaluations shall be conducted by a PHS representative or an NPS, State or local Sanitarian. Follow-up evaluations, made to verify correction of deficiencies, shall be conducted by either the person who made the periodic evaluation or other NPS personnel designated by the Superintendent (See Standards I and II for specifics on evaluations and ratings on Food Service Sanitation and Safety and Occupational Health respectively).

2. Periodic Evaluations. In accordance with the schedule set forth below, the Superintendent or his (her) authorized representative is to conduct comprehensive operational evaluations of each concessioner activity, utilizing

the standards and forms provided in Chapter 21. The previous year's average operational rating, type of operating season (Year Round or Seasonal Operation), as well as size of operation, will determine the number of required periodic evaluations to be conducted.

a. **PRE-SEASONAL EVALUATIONS:** All operations, unless operationally impossible, are to have a comprehensive pre-season evaluation of each individual facility or operation based on the procedures contained herein and the standards provided in Chapter 21.

Purpose of Pre-Seasonal Evaluations:

The purpose of the pre-seasonal evaluation is to make certain the concessioner will be opening a safe and healthful operation, and to allow the park and the concessioner to arrive at a mutual understanding of the goals and objectives for the operating season. Such evaluations, while beneficial, may not be counted as one of the periodic evaluations and the concessioner is to be made aware of its purpose. This pre-season evaluation review is to be used as a management tool to alert both the park manager and the concessioner of those deficiencies which are in need of correction, prior to the operating season. When the concessioner fails to correct any major deficiencies (first & second priority) that may be found during the pre-season evaluation, the park may temporarily postpone the opening of the concessioner's operation, until the major deficiencies are corrected.

Time Schedule:

I order to allow the concessioner sufficient time to correct those deficiencies found in a pre-season evaluation, especially those which are classified as major deficiencies, pre-season evaluations are to be conducted within a reasonable period of time prior to the beginning of the operating season. Year-round operations are to have pre-season evaluations completed prior to the concessioner's peak season and for those parks with winter operations, pre-season evaluations are to be conducted in the fall, prior to the beginning of the winter operating season. Follow-up evaluation should be made as soon as possible (normally 15 days for A and/or B items) to determine whether deficiencies identified have been corrected prior to the beginning of the operating season.

Pre-Season Evaluation Forms:

Facilities and operations are evaluated using the forms and procedures contained herein. As stated earlier, pre-season evaluations are not to be counted as one of the periodic evaluations. In order to avoid confusion, PRE-SEASON EVALUATION should be printed in bold letters across the top of all forms used during the pre-season evaluation.

b. YEAR-ROUND OPERATIONS:

In addition to the pre-season evaluations, a minimum of three (3) periodic evaluations are to be conducted for all year-round operations. The number of such periodic evaluations may be reduced by one (1) per year if that facility received in the previous year an annual operational rating of four (4) or higher and each Periodic Rating in the current year continues to be four (4) or higher.

c. SEASONAL OPERATIONS (6 MONTHS OR LESS):

Large Operation: (gross revenue over \$250,000)

In addition to the pre-season evaluation, a minimum of two (2) evaluations are to be conducted for large seasonal operations. The number of evaluations cannot be reduced.

Small Operations: (Gross revenue less than \$250,000)

In addition to the pre-season evaluation, a minimum of (2) two evaluations are to be conducted of each concessioner's facility. However, the number of such periodic evaluations may be reduced by one (1) per year for that facility if the following criteria is met:

Previous year's average rating for that facility was four (4) or higher and current year's evaluation continues to be four (4) or higher.

When one evaluation is allowed for small seasonal operations, this one evaluation must be conducted before the end of the operating season, preferably mid-season.

NUMBER OF YEARLY EVALUATIONS

Type of Operation	<u>Number of Periodic Evaluations</u>			<u>Number of Professional PHS Insp.</u>			<u>Number of Professional Safety Insp.</u>
	HI	STD.*	Normal	HI	STD.**	Normal	ALL
Year Round	2		3	2		4	1
Large Seasonal	2		2	1		2	1
Small Seasonal	1		2	1		2	1

*HI STANDARD. Previous year's average rating for that facility was four (4) or higher and current year evaluations thus far continue to be four (4) or better.

** HI STANDARD (PHS). All scores for previous and current year thus far for that facility were 85 (Satisfactory) or higher.

Evaluations are generally to be unannounced. However, limited prior notice may be given when necessary to ensure that the concessioner or his designated representative will be available to accompany the NPS Evaluator. Discretion should be used regarding appropriate time frames, e.g., food service evaluations should not be conducted at busy meal periods.

When making operational evaluations of facilities housing several activities (e.g., overnight accommodations, merchandising, food) the general standard elements (usually those under the heading of Facility Exterior and Facility Interior) that are applicable to all activities should be evaluated on only one of the evaluation reports with appropriate cross referencing notations made on the other reports. The same reporting procedure is to be followed on all subsequent operational evaluations.

At the start of the operational evaluation, the evaluator will enter, in the spaces provided on the Periodic Concession Evaluation Report, all identifying data such as the concessioner's name, type of facility or service, etc., and will circle the item number of all applicable elements.

During the evaluation, all deviations from the standards for each applicable element shall be described in appropriate detail under the "Evaluation Observations" portion of the Periodic Concession Evaluation Report, using the continuation sheet as needed. A review will then be made of all such deviations to determine which are meaningful deviations. A meaningful deviation is a departure from the established standard which is frequent enough to indicate a general pattern of occurrence or important enough that one occurrence is too many. If the deviation is considered meaningful, a check will be placed after the appropriate numbered element in the "Elements/Classification" section of the report. If it is not meaningful, the remarks should remain in the "Evaluation Observation Section" as a future reminder for the concessioner and the evaluator, but not be counted as a deficiency.

The total number of A's, B's, and C's is then calculated and entered in the space provided at the bottom of the form. Regardless of the number of times a given element is found deficient, it should be checked and counted only once. Ratings are determined by the number of A, B or C elements found deficient, not by the number of occurrences under an element.

An acceptable alternate evaluation procedure is to use a copy of the continuation sheet, or a facsimile thereof, to record deficiencies and then transfer them to the official Periodic Concession Evaluation Report with all other evaluation procedures remaining the same. A sample Periodic Concession Evaluation Report and continuation sheet is shown as Exhibit 1 at the end of this Chapter.

D. ASSIGNING THE PERIODIC OPERATIONAL RATING

Upon completing the initial periodic operational evaluation, the evaluator will analyze and assign, in the space provided on the Periodic Concession Evaluation Report a preliminary numerical rating using the rating criteria set forth below (does not apply to Food Service Sanitation or Safety and Occupational Health Evaluations). Periodic rating scores may not be higher than preliminary periodic rating scores for any given periodic evaluation.

PERIODIC EVALUATION RATING CRITERIA

Numerical

Rating

SATISFACTORY

- | | |
|---|--|
| 5 | Always meets standards. No First Priority (A) or Second Priority (B) deficiencies exist. Very few, if any, third priority (C) deficiencies exist. Consistently provides outstanding visitor facilities and services. |
| 4 | Almost always meets standards. No First Priority deficiencies (A) exist. Second Priority (B) and Minor third priority (C) deficiencies may exist. |
| 3 | Usually meets standards. A few deficiencies of a First Priority (A) nature exist. Second priority (B) and third priority (C) deficiencies may exist. |

UNSATISFACTORY

- | | |
|---|---|
| 2 | Many Major (A & B) and other deficiencies exist. Generally does not meet standards. |
| 1 | Fails to meet 2nd level rating criteria. Overall performance is totally inadequate. |

Where no A or B deficiencies are noted, the rating given will be a final rating for that period. In other cases, the final rating will be made after the lapse of the 15 days or other time specified in the report.

Immediately upon completing the operational evaluation, the Superintendent and concessioner, or their representatives, are to discuss the entire evaluation and arrive at a specific plan for making corrections within the established correction period.

They shall then sign and date the form with a copy given to the concessioner or his designated representative, thus providing him with a notice of the

rating. When the alternate evaluation procedure is used, the evaluator may give the concessioner or his representative a copy of the completed work sheet but without a rating which will be included in the official Periodic Report submitted to the concessioner as soon as practical after the evaluation.

The concessioner's or his representative's signature does not necessarily indicate agreement, only that the concessioner or his representative has seen the rating and that it has been discussed with him. If the report has not been signed by the concessioner or his representative, then the report is to be transmitted promptly to the concessioner by Certified Mail/Return Receipt Requested.

If the park or area is not staffed with personnel to properly conduct the required operational evaluations, it is incumbent upon the Superintendent to seek assistance from the Regional Office.

E. FOLLOW-UP EVALUATIONS

The required periodic follow-up evaluations should be made as soon as possible after the time specified in the report (normally 15 days for A and/or B items or at the time of the next routine operational evaluation for C items) to determine whether or not deficiencies identified on the initial evaluation have been corrected. New deficiencies should not be included in the follow-up evaluations. If "A" or "B" deficiencies have not been corrected, the initial rating shall be downgraded one (1) point and such final rating shall be entered on the report and a copy furnished the concessioner or his representative. No periodic rating score may be higher than the preliminary score assigned. Copies of Final Periodic Reports showing unsatisfactory ratings are to be sent immediately to the Regional Director, Attention Regional Concessions Office. Region will in turn immediately provide an informational copy to WASO, Concessions Division.

F. AVERAGE PERIODIC OPERATIONAL RATINGS

At the end of the operational evaluation rating year, not to exceed September 30, the individual periodic ratings for a given facility or service are to be summarized on the Summary of Periodic Operational Ratings Form 10-627 (Exhibit 2). The rating scores are to be totaled at the bottom of this form and then an average score calculated for such facility/service. This periodic rating average is then to be transferred to the Concession Operational Performance Report Form 10-629 (Exhibit 3) and a numerical rating for all like facilities or services calculated and inserted in the space provided.

G. DETERMINING THE ANNUAL OPERATIONAL PERFORMANCE RATING

Upon completion of the individual facility annual summary ratings on Form 10-629, space is provided for the Superintendent to place the final deter-

mination as to the concessioner's degree of conformance to the operational standards, i.e., Satisfactory, Marginal or Unsatisfactory.

In assigning the Annual Operational Rating, the Superintendent shall take into account the factors set forth in the Concession Operational Performance Report (Form 10-629), Exhibit 3 of this chapter, together with the supporting data relating thereto.

When the Superintendent assigns an Annual Operational Rating which is, or appears to be somewhat inconsistent with the annual numerical ratings set forth on the Concession Operational Performance Report (Form 10-629), that action must be discussed at the bottom of Form 10-631 (NPS Concessioner Annual Overall Rating). The statement should include, where applicable, actions needed or being taken to upgrade any deficient facilities or services.

H. USE OF MARGINAL RATINGS

The marginal rating is provided for the purpose of permitting the Superintendent, where warranted, to adjust the Annual Operational Rating up or down to more accurately reflect the true performance of the concessioner. For example, a concessioner's operational performance in an area or areas may be slightly less than satisfactory yet not sufficiently so to warrant declaring the entire operation Unsatisfactory. Also, situations may arise where a concessioner's average rating for one or more of the activities listed on the Concession Operational Performance Report (Form 10-629) may be three (3) or slightly higher yet individual units within specific activities are not in themselves satisfactory as indicated.

The Marginal rating may also be used in rating: (1) The Food Service Sanitation (2) Safety and Occupational Health (3) Contract Compliance, and (4) in arriving at the Annual Overall Rating.

I. DEVELOPMENT OF NEW STANDARDS

There are certain activities not currently covered in this program. In such cases where parks have activities for which standards have not been developed, they are to prepare draft standards, including classification of elements utilizing this program's format. The draft is to be submitted to WASO's Concessions Division, through the Regional Office. WASO will then be responsible for finalizing the standards with appropriate Regional input.

J. DEVELOPMENT OF REVISED SUPPLEMENTAL ELEMENTS

It is recognized that not all elements of the following standards will be applicable for certain visitor services/facilities of significant uniqueness of either operation or age. In such cases, the Superintendent may submit to Region, which will provide an informational copy to WASO, supplemental elements

that are applicable to that park's particular situation. Region will then be responsible for approving and finalizing those submissions, which shall be submitted in the same format as the standards herein.

In situations where revised/supplemental elements are a means to provide a smooth transition period for a visitor service/facility to come into compliance with Servicewide standards, that intent, as well as a time schedule, shall be clearly stated in the park's supplemental elements.

SAMPLE - PERIODIC CONCESSION EVALUATION REPORT

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Food and Beverage Service (Including Employee Operations)

Standard No. III

Form 10-803
(Rev. 6/82)

REGION <i>RMRO</i>	PAGE <i>Anywhere NP</i>
NAME OF CONCESSIONER <i>U.S. Conc.</i>	FACILITY SERVICE <i>Blue Sky Inn</i>

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date (s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		D. RATES		E. (CONT'D)	
1.	Structure Condition (B) _____	13.	Menus (B) _____	23.	Guest Checks (C) _____
2.	Grounds (B) _____	14.	Authorized Rates (A) _____	24.	Furniture Arrangement & Cond. (C) _____
3.	Public Signs (C) _____	E. FOOD & BEVERAGE SERVICE		25.	Floors, Walls & Ceilings (B) _____
4.	Garbage and Trash (A) _____	15.	Food Availability (B) _____	26.	Environment (B) _____
5.	Public Restrooms (A) ✓	16.	Availability of Condiments (B) _____	27.	Employee Meal Hours (C) _____
6.	Public Signs (C) _____	17.	Customer Attention (B) _____	F. BEVERAGE	
7.	Public and Other Areas (B) _____	18.	Food Temperatures (B) _____	28.	Beverages (B) _____
B. FACILITY INTERIOR		19.	Food Prepared to Order (B) _____	29.	Drink Presentation (C) _____
8.	Employee Performance (A) _____	20.	Merchandising (C) _____	30.	Liquor Laws (A) _____
9.	Employee Attitude (A) _____	21.	Table Appearance (B) ✓	31.	Vending (B) _____
10.	Employee Appearance (A) _____	22.	Tableware (A) _____	32.	Beverage Container Guidelines (B) _____
11.	Operating Hours (B) ✓				
12.	Staffing (A) _____				

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED
5	Restroom in need of Cleaning	3-30-82	3-30-82
11	Operating hours not posted	3-30-82	3-30-82
21	Tablecloths used are very soiled & stained. Should be replaced.	3-30-82	
27	Designated eating area for employees is needed.	3-30-82	

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL	3-15-82	1	2	1	(3) PRELIMINARY	(Signature) <i>T. Jones</i>	(Signature) <i>B. Quick</i>
FOLLOW-UP	3-30-82	0	1	1	(3) FINAL	(Signature) <i>T. Jones</i>	(Signature) <i>B. Quick</i>

REMARKS:

SUPERINTENDENT'S COPY

PERIODIC CONCESSION EVALUATION REPORT (Continuation Sheet)

Form 10-628
(Rev. 8/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT (CONT'D)
Standard No. _____

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE
INITIAL EVALUATION DATE	FOLLOW-UP EVAL. DATE

NPS INSPECTOR

[illegible]

REMARKS

SAMPLE - SUMMARY OF PERIODIC OPERATIONAL RATINGS - FORM 10-627

Form 10-627
(Rev. 6/82)United States Department of The Interior
NATIONAL PARK SERVICE
SUMMARY OF PERIODIC OPERATIONAL RATINGS

Concessioner U.S. Concessions Co. Region RMRO
 Facility/Service Food / Beverage
 Location Blue Sky Inn Park Anywhere Natl Park

1st PERIODIC RATING PERIOD-DATE 3-15-82

EVALUATION PERIOD	EVALUATION OBSERVATIONS BY CLASS			RATING PRELIMINARY/FINAL
	A	B	C	
Initial Evaluation	<u>1</u>	<u>2</u>	<u>1</u>	<u>3</u> / <u>3</u>
15-Day Follow-up	<u>0</u>	<u>1</u>	<u>1</u>	
Next Routine Evaluation				

2nd PERIODIC RATING PERIOD-DATE 6-14-82

Initial Evaluation		<u>2</u>	<u>1</u>	<u>4</u> / <u>4</u>
15-Day Follow-up				
Next Routine Evaluation				

3rd PERIODIC RATING PERIOD-DATE 8-15-82

Initial Evaluation	<u>0</u>	<u>0</u>	<u>1</u>	<u>5</u> / <u>5</u>
15-Day Follow-up				
Next Routine Evaluation				

4th PERIODIC RATING PERIOD-DATE _____

Initial Evaluation				
15-Day Follow-up				
Next Routine Evaluation				

PERIODIC RATING SUMMARY

FINAL SCORES

1st Rating Period

3

2nd Rating Period

4

3rd Rating Period

5

4th Rating Period

TOTAL SCORE

12

Average Annual Periodic Operational
 Rating (Divide total score by the number
 of rating periods and round off to the
 nearest tenth.)

4

SAMPLE - CONCESSIONS OPERATIONAL PERFORMANCE REPORT - FORM 10-629

FORM 10-829
(6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

CONCESSION OPERATIONAL PERFORMANCE REPORT

CONCESSIONER: *U. S. Concessions Co.*

REGION

DATE: Oct. 1982

PARK One where N. P.

INDIVIDUAL FACILITY ANNUAL SUMMARY RATING

Instructions: List below the annual rating that has been assigned to each facility/service as set forth on the Summary of Periodic Operational Ratings form. Round off all rating scores to the nearest tenth. (For Food Service Sanitation, see Summary of Periodic Food Service Sanitation Rating Scores, Standard No. 1.)

[illegible]

SAFETY This area is rated once annually as Satisfactory, Marginal or Unsatisfactory. The Safety Rating is not arrived at numerically and therefore is not included above. For the OPERATIONAL PERFORMANCE RATING to be considered Satisfactory, both Safety and Sanitation must have a rating of Satisfactory, unless a full explanation is provided on FORM 10-631.

PHS RATING

Satisfactory
Satisfactory, Marginal, Unsatisfactory

SAFETY RATING

Satisfactory, Marginal, Unsatisfactory

OPERATIONAL PERFORMANCE RATING:

Satisfactory, Marginal, Unsatisfactory

The Concessioner's Operational Performance Evaluation for 19__ is recorded above. This rating is based on the Superintendent's review of the following factors as presented in the park's evaluation documents:

1. The average annual ratings as set forth above.
2. A review of the individual facility and service ratings and/or the degree to which they fluctuated.
3. A & B Deficiencies uncorrected at the time of follow-up evaluations.
4. "C" Deficiencies not corrected in a timely manner.
5. Any specific action(s) being taken to eliminate Unsatisfactory conditions.
6. Consideration of both positive and negative visitor comments.

Superintendent's Signature

Date _____

Comptroller's Signature
(To signify receipt of rating)

Date _____

NARRATIVE CONCERNING STATUS OF THE CONCESSIONER'S OPERATIONAL PERFORMANCE MUST BE PROVIDED ON FORM 10-831.

CONCESSIONER REVIEW PROGRAM-OPERATIONAL PERFORMANCE STANDARDS

INTRODUCTION

The following General Standard elements apply to almost all concession operations. There are, however, some instances where individual elements contained in the operating standards, include additional requirements to the general standards. In such cases, the operating standard element so states. Elements 3 and 4 below allow for alternative classification of the severity of the deficiency, because Public Signs and Trash Collection are not of the same importance in all operations. The specific operating standards will indicate which classification is to be used. Exhibits of the various operating standards and forms used in this program can be found at the end of this chapter.

A. GENERAL STANDARD FACILITY EXTERIOR

1. Structure Condition. The exterior of the buildings and other outdoor appurtenances must be in good physical condition, well painted or otherwise treated to protect against deterioration and kept clean and in good repair. (B)
2. Grounds. Grounds shall be well maintained, properly illuminated, uncluttered and free of litter, and debris. This will include facility entrances, stairways, parking areas, trails, driveways, walkways and other areas for which the concessioner is responsible or as outlined in the land assignment. (B)
3. Public Signs. Public signs for which the concessioner is responsible must be appropriately located, accurate, attractive and well maintained. Signs of a permanent nature shall be prepared in a professional manner, consistent with NPS standards, appropriate for the purpose they serve and, be approved by the Superintendent prior to installation. (B) or (C)
4. Garbage and Trash. The concessioner shall provide an effective system for the collection and disposal of garbage and trash within its areas of responsibility at the facilities. Waste should not accumulate in trash containers to the point of overflowing. Trash containers shall be conveniently located and in sufficient quantity to handle the needs of the area. Refuse shall be stored in receptacles which are covered, waterproof, and which comply with all relevant construction standards (such as bear and vermin proof),

B. FACILITY INTERIOR

5. Public Restrooms. Public toilet areas shall be clean, odorless, free of litter, well illuminated, ventilated, and maintained. Toilet bowls, sinks and urinals shall be clean, reasonably free of stains and in proper operating condition. Toilet tissue, towels or air drying devices and soap shall be provided. Walls, floors, ceilings, mirrors, waste receptacles, chairs and other furnishings shall be clean, and well maintained. (A)
6. Public Signs. Public signs for which the concessioner is responsible must be appropriately located, accurate, attractive and well maintained. Signs of a permanent nature shall be prepared in a professional manner consistent with NPS standards, appropriate for the purpose they serve and, be approved by the Superintendent prior to installation. (C)
7. Public and Other Areas. The lobby, offices, storerooms, workrooms, ticket booths, tackrooms, corridors and other space shall be clean, properly illuminated and well maintained. All furniture provided should be commensurate with the size of the area and its intended purpose, present a well organized and uncluttered appearance and, be in good repair. Chairs, lamps, tables, ash trays, draperies and other furnishings shall be appropriate and adequate for the visitors' comfort. Floors must be clean, free of litter and stains. Vinyl floor coverings must be clean, waxed or buffed, free of cracks, chips and worn places. Masonry tile or flagstone grouting must be in good repair and clean. Wood floors are to be clean and waxed or otherwise sealed. Carpeting must be clean, reasonably free of stains and be in good repair. Walls and ceilings are to be free of breaks and stains and have a fresh appearance. Windows must be clean and free of breaks. (B)

C. OPERATIONAL

8. Employee Performance. An active training program for the development of the necessary skills and techniques must be provided for all employees.

These sessions shall stress work performance and also include product and service presentation,

cleanliness, employee attitudes and NPS philosophy and policy. Performance should be indicative of good training.

(A)

9. Employee Attitude. Each employee is to project a hospitable, friendly, helpful, positive attitude and be capable and willing to answer visitors' questions (about both job and general park information).

(A)

10. Employee Appearance. The concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the concessioner. The concessioner shall require its employees to exercise courtesy and consideration in their relations with the public and present a neat, clean and otherwise attractive personal appearance.

(A)

11. Operating Hours. All facilities and services shall be operated in accordance with the hours authorized by the Superintendent or as specified in the operating plan and/or rate schedule. Hours of operation shall be prominently displayed at each facility in such a manner as to be easily visible to the public.

(B)

12. Staffing. All facilities and services must be properly staffed so as to prevent undue delays, e.g., registration areas, tour and transportation services, rental services, etc. In determining what constitutes undue delay, consideration shall be given to the kinds and types of service being rendered and situations or conditions beyond the control of the concessioner such as unanticipated influxes of visitors, facility or equipment breakdowns or sudden weather changes. The reasonableness of the delay, based on the above, should be the determining factor.

(A)

D. RATES

13. Authorized Rates. All rates being charged shall not exceed those approved by the Superintendent. These rates are to be verified against the specific approved service, portion size, quality, price or other such criteria.

(A)

14. Posting of Rates. Rates shall be prominently posted in sales areas (point of purchase) as necessary. (B)

15. Sales Verification. Sales must be accurately and legibly recorded. Receipts shall be given for purchases when requested. (C)

E. OTHER

16. Vending. Vending and ice machines and their location shall be easily identified, adequately illuminated, conveniently located as approved by NPS, clean, properly stocked and be in good working condition. (B)

17. Beverage Container Guidelines. All of the requirements of the NPS Beverage Container Guidelines, as stated in Chapter 33 must be followed for all beverage sales including vending machines. Any State mandatory deposit law in effect must also be adhered to. (B)

FOOD SERVICE SANITATION INSPECTIONS - STD. NO. I

The goal for a system of sanitation inspections is to ensure correction of health hazards. An effective system must not only identify hazards, but also assign responsibility for correction and follow up to assure that some action is taken, in addition to rating the concessioner's performance. The correction of most of the operational and equipment deficiencies will be the concessioner's responsibility. Others, usually involving structural faults in government buildings, may be the responsibility of NPS.

INSPECTION AND RATING PROCEDURES

A. Official Inspections

Each food service facility (restaurant, snack bar, bar, etc.), is to be inspected for sanitation at least quarterly in year-round operations and at least twice during the operating period for seasonal operations. The number of periodic food service sanitation inspections of a facility may be reduced by two for year-round and one for seasonal operations if all rating scores for such facility for the previous year and the current year have been 85 (Satisfactory) or higher. The 1976 PHS (FDA) Food Service Sanitation Ordinance and the Food Service Establishment Inspection Report (Form FD 2420, 5/78) related thereto will be used as the standard as well as for recording inspection findings. All such inspections shall be made by either a PHS representative or an NPS, State or local Sanitarian.

Upon completion of an inspection, the Food Sanitation Inspection Report will be completed by the PHS representative or other Sanitarian before leaving the park. All significant deviations from the PHS standards will be identified on the PHS inspection report for each operation by circling the appropriate item number. A specific explanation of the deficiencies shall be noted on the reverse side of the report form or appended thereto and a correction period assigned (See Correction Period Section Below). A rating score for that inspection should then be calculated and recorded on the report.

The Sanitarian will discuss the report with the park concession specialist or other assigned individual who will at that time identify those deficiencies, if any, which are the responsibility of the park (NPS) to correct. The park representative will at that time also make the necessary adjustments on the front of the report on the line immediately below

the PHS rating score (See example form at end of this exhibit.) He/she will indicate on this line the corresponding item numbers of those deficiencies which are NPS's responsibility to correct. Then all deficiency points relating to NPS areas of responsibility should be totaled and added to the rating score so that the score will reflect only the concessioner's responsibilities.

The park representative will then give a copy of the adjusted report to the concessioner and point out respective responsibilities. If the unadjusted score for the establishment is less than 75 or if a severe health hazard exists regardless of the score, the Superintendent or his authorized representative shall meet with the concessioner as soon as possible following the inspection to discuss corrective action and correction dates.

The Sanitarian is to immediately notify the Regional Concessions Office and the Regional and WASO Environmental Sanitation Offices of the Unsatisfactory Rating.

Copies of all reports are also to be forwarded immediately to the Regional Concessions Office and the Regional PHS Representative by the park. Attached to this should be a statement of action taken or proposed by the park to correct NPS deficiencies, or a copy of an applicable budget request (Form 10-237, 10-238 or other submission). Once an action statement is submitted with the PHS report it need not be attached to subsequent reports for that year unless there is a change.

B. "UNOFFICIAL" OR COURTESY INSPECTIONS

The Superintendent or designated staff member may, from time to time, conduct courtesy inspections for conformity to PHS standards. Such inspections are for the purpose of assisting the concessioner in maintenance of standards and/or to aid in the identification of potential future problems. Such inspections, while beneficial, have no official standing and may not be considered in assignment of periodic or overall ratings. Courtesy inspections may be made using a locally designed form or the regular PHS form, provided that if the PHS form is used, the word "UNOFFICIAL" is printed in large letters at the top and the concessioner is made aware of its courtesy purpose.

C. CORRECTION PERIOD

The Environmental Sanitation Officer shall designate specific correction dates for each deficiency based on the severity of the item, using his/her professional knowledge. In the absence of such desig-

Concessioner Review Program-Operational Performance
Standards

nation and as a general rule, all deficiencies should be assigned a correction period of 15 days of the initial sanitation inspection. Where correction of an item(s) requires a large expenditure, all responsible parties should discuss the situation and mutually agree upon correction dates. This does not preclude modifying or discontinuing parts or all of the food service until correction is completed.

D. REINSPECTION; FOLLOW-UP INSPECTIONS

Where the Rating Score of an establishment is less than 75, a comprehensive full reinspection shall be conducted within 30 days or as otherwise specified in the inspection report, to determine whether the overall status of the facility has improved. Reinspections are to be made by the person making the original inspection or where that is not possible, by another Sanitarian. A copy of the reinspection report should be sent to the Regional Concessions and Sanitation Offices and to the Environmental Sanitation Program Office in WASO.

Where the Rating is 75 or above, a follow-up inspection shall be made as soon as possible following the correction period specified by the Public Health Inspector on the back of Form 2420, to determine whether correction of the specific violations described in the report has been accomplished. Follow-up inspections shall be made by either the person making the inspection or an NPS representative designated by the Superintendent who is knowledgeable of the deficiencies noted.

E. RECORDING PERIODIC RATINGS

Numeric Periodic Rating Scores shall be entered on a Summary of Periodic Food Service Sanitation Rating Scores Form 10-622. Re-evaluation or Follow-up Inspection Scores should not be recorded on this sanitation summary form.

F. ANNUAL RATINGS

After the end of the evaluation year (not later than September 30), an Average Annual Rating Score shall be calculated for each food service establishment or operation following the instructions set forth on the Summary of Periodic Food Service Sanitation Rating Scores (Form 10-622). This resulting score shall then be transferred to the Concession Operational Performance Report (Form 10-629) using a separate line for each facility.

As previously stated, scores from reinspections or follow-up inspections are not to be included in calculation of the annual rating. An Annual Overall Average Rating Score combined for all food service establishments operated by that concessioner shall then be calculated and converted to an NPS Equivalent Rating using the following conversion table:

OVERALL AVERAGE PHS RATING SCORE	NPS EQUIVALENT RATING
85 - 100	SATISFACTORY
75 - 84	MARGINAL
< - 75	UNSATISFACTORY

The NPS Equivalent Rating so determined is to be entered on the Concession Operational Performance Report (Form 10-629).

In assigning the year-end NPS Equivalent Rating, the Superintendent shall take into account, in addition to the numeric inspection scores, the extent to which deficiencies have or have not been corrected within the time specified for correction, as well as excessive fluctuations in rating scores during the operating period. Where warranted, the Superintendent may assign an NPS equivalent rating different from the calculated Numeric Rating but such action must be fully explained in the mandatory narrative (end of the year statement) on the NPS Concessioner Annual Overall Rating (Form 10-631). The end of the year narrative must also discuss by name any facility which has received an unsatisfactory PHS rating throughout the year and give the current status of that facility's operation.

G. Less Than Satisfactory Operations: When any food service facility receives a less than Satisfactory PHS rating or if a severe health hazard exists regardless of score, the Superintendent is to take immediate action.

1. UNSATISFACTORY: When the rating score for an inspection is less than 75 or if a severe health hazard exists regardless of score, the Superintendent may:
 - a. Close that facility until the deficiencies have been corrected, or
 - b. Take any action listed under 2, below.
2. MARGINAL: When the rating score is from 75 to 84, the Superintendent may:
 - a. Require that service be modified or, that certain activities be discontinued until the deficiencies have been corrected, and/or
 - b. Closely monitor progress through additional inspections, spot checks or reports and report findings to WASO through the Regional Office.

In every case, the concessioner should be reminded that an annual overall sanitation inspection of less than satisfactory for the year may result in a less than Satisfactory Annual Overall Rating.

CONCESSION

NPS-48

Concessioner Review Program-Operational Performance Standards

EXHIBIT 1

Chapter 21

Page 5

Std. No. I

SAMPLE - FOOD SERVICE ESTABLISHMENT INSPECTION REPORT

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE PUBLIC HEALTH SERVICE - FOOD AND DRUG ADMINISTRATION FOOD SERVICE ESTABLISHMENT INSPECTION REPORT																											
Based on an inspection this day, the items circled below identify the violation in operations or facilities which must be corrected by the next routine inspection or such shorter period of time as may be specified in writing by the regulatory authority. Failure to comply with any time limits for corrections specified in this notice may result in cessation of your Food Service operations.																											
OWNER NAME <i>U.S. Concessions Co.</i>														ESTABLISHMENT NAME <i>Blue Sky Inn</i>													
ADDRESS <i>Anywher Natl. Park</i>														J. Smith, Mgr.													
ESTABLISHMENT ID														DATE													
COUNTY DISTRICT TYPE EST NO														YR. MO. DAY													
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28														INSPECT TIME (Min.)													
														820101													
PURPOSE														29													
1 Compliant														3													
2 Investigation														4													
5																											
ITEM														ITEM													
WT COL														WT COL													
FOOD														GARBAGE AND REFUSE DISPOSAL													
*01 SOURCE, SOUND CONDITION, NO SPOILAGE														18 PRE-FLUSHED, SCRAPPED, SOAKED													
5 30														1 47													
02 ORIGINAL CONTAINER, PROPERLY LABELED														19 WASH, RINSE WATER CLEAN, PROPER TEMPERATURE													
1 31														2 48													
FOOD PROTECTION														*20 SANITIZATION RINSE CLEAN, TEMPERATURE, CONCENTRATION, EXPOSURE TIME, EQUIPMENT, UTENSILS SANITIZED													
*03 POTENTIALLY HAZARDOUS FOOD MEETS TEMPERATURE REQUIREMENTS DURING STORAGE, PREPARATION, DISPLAY, SERVICE, TRANSPORTATION														4 49													
5 32														21 WIPING CLOTHS CLEAN, STORED, RESTRICTED													
*04 FACILITIES TO MAINTAIN PRODUCT TEMPERATURE														1 50													
4 33														22 FOOD CONTACT SURFACES OF EQUIPMENT AND UTENSILS CLEAN, FREE OF ABRASIVES, DETERGENTS													
*05 THERMOMETERS PROVIDED AND CONSPICUOUS														2 51													
1 34														23 NON-FOOD CONTACT SURFACES OF EQUIPMENT AND UTENSILS CLEAN													
*06 POTENTIALLY HAZARDOUS FOOD PROPERLY THAWED														1 52													
2 35														24 STORAGE, HANDLING OF CLEAN EQUIPMENT/UTENSILS													
*07 UNWRAPPED AND POTENTIALLY HAZARDOUS FOOD NOT RE-SERVED														1 53													
4 36														25 SINGLE-SERVICE ARTICLES, STORAGE, DISPENSING, USED													
08 FOOD PROTECTION DURING STORAGE, PREPARATION, DISPLAY, SERVICE, TRANSPORTATION														1 54													
2 37														26 NO RE-USE OF SINGLE SERVICE ARTICLES													
09 HANDLING OF FOOD (ICE) MINIMIZED														2 55													
2 38														WATER													
10 IN USE, FOOD (ICE) DISPENSING UTENSILS PROPERLY STORED														*27 WATER SOURCE, SAFE: HOT AND COLD UNDER PRESSURE													
1 39														5 56													
PERSONNEL														SEWAGE													
*11 PERSONNEL WITH INFECTIONS RESTRICTED														*28 SEWAGE AND WASTE WATER DISPOSAL													
5 40														4 57													
*12 HANDS WASHED AND CLEAN, GOOD HYGIENIC PRACTICES														PLUMBING													
5 41														29 INSTALLED, MAINTAINED													
13 CLEAN CLOTHES, HAIR RESTRAINTS														1 58													
1 42														*30 CROSS-CONNECTION, BACK SIPHONAGE, BACKFLOW													
FOOD EQUIPMENT AND UTENSILS														5 59													
*14 FOOD (ICE) CONTACT SURFACES DESIGNATED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED														TOILET AND HANDWASHING FACILITIES													
2 43														*31 NUMBER, CONVENIENT, ACCESSIBLE, DESIGNED, INSTALLED													
15 NON-FOOD CONTACT SURFACES DESIGNATED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED														4 60													
1 44														32 TOILET ROOMS ENCLOSED, SELF-CLOSING DOORS, FIXTURES, GOOD REPAIR, CLEAN, HAND CLEANSER, SANITARY TOWELS/TISSUE, HAND-DRYING DEVICES PROVIDED, PROPER WASTE RECEPTACLES													
16 DISHWASHING FACILITIES, DESIGNED, CONSTRUCTED, MAINTAINED, INSTALLED, LOCATED, OPERATED														2 61													
2 45																											
17 ACCURATE THERMOMETERS, CHEMICAL TEST KITS PROVIDED, GAUGE COCK, IPS VALVE														1 46													
FOLLOW-UP														RATING SCORE													
1 74														27 =													
														73													
* CRITICAL ITEMS REQUIRING IMMEDIATE ACTION														(See Back) Adjusted Rating (+6) = 79													
RECEIVED BY														J. Doe PHS													
R. Jones, NPS Conc. Spec.																											

FORM FD-2420 (2-76) PREVIOUS EDITIONS ARE OBSOLETE

U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

CONCESSIONNPS-48Concessioner Review Program-Operational Performance
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SAMPLE - FOOD SERVICE ESTABLISHMENT INSPECTION REPORT

ITEM NO.	REMARKS	CORRECTED BY
3	Walk-in refrig. #1 50°F. Must be kept 45°F or less.	24 hrs.
5	Provide thermometer in walk-in #1	15 days
6	Chicken thawing at room temp. Thaw in refrig.	immediately
14	Repair or replace deeply gouged, cracked chopping block.	90 days
20	Final rinse on dishwash machine 150°F. Repair to achieve 180°F. If cannot do before next meal, use chemical sanitizer or paper service.	immediately
33	Remove accumulation of grease and rotting food from inside of dumpster. Regular cleaning is needed.	15 days
36	Clean grease spillage from around stoves.	48 hrs.

STRUCTURE or EQUIPMENT

*31	Handwashing sink needed near food prep. area.	6 mos.
35	Repair broken screens all kitchen windows	90 days
*37	Plywood walls in salad room should be painted or covered with material that is smooth, cleanable and non-absorbent.	6 mos.
*39	Install electric exhaust fan in windowless restroom. Must vent to outside. Interwire to turn on with light switch.	1 year

*NPS is responsible for items 31, 37, 39 (6 demerits)
Concessioner is responsible for all other items.

SAMPLE - SUMMARY OF PERIODIC FOOD SERVICE SANITATION RATING SCORES

FORM 10-622
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

SUMMARY OF PERIODIC
FOOD SERVICE SANITATION
RATING SCORESEstablishment/
Operation
Concessioner Blue Sky Inn
U.S. Concessions, Inc.

YEAR

Region
Park R.M.R.
Anywhere NPPERIODIC FOOD SERVICE
SANITATION RATING SCORES(Do not use Reinspection
or Followup Inspections)

DATE

1.	<u>79</u>	<u>1-1-82</u>
2.	<u>95</u>	<u>4-5-82</u>
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

174
87 TOTALAverage Periodic Rating Score (APRS) - (Total score divided by the number
of comprehensive inspections). Transfer this APRS to the Concession Opera-
tional Performance Report (Form 10-629)

SAFETY AND OCCUPATIONAL HEALTH - STD. No. II

In accordance with the provisions of the Occupational Safety and Health Act of 1977 (OSHA) and the National Park Service Safety and Occupational Health Policy, it is the responsibility of each concessioner to provide a safe and healthful environment for all of its employees and visitors.

To adequately accomplish this responsibility, the National Park Service Division of Safety Management has developed a Safety and Occupational Health Inspection guideline. The following standards will be utilized in concert with inspection requirements.

CFR Part 1910 (OSHA Standards)

*NFPA 13A

NFPA 72A

NFPA 80

NFPA 30

NFPA 89M

NFPA 96

NFPA 43D

NFPA 70 (National Electric Code)

NFPA 101 (Life Safety Code)

Uniform Plumbing Code

Uniform Building Code

36 CFR Parts 3 and 4 for Boating and Motor Vehicles

**ANSI - B771 (For Ski Tours and Lifts and other areas)

*NFPA - National Fire Protection Association

**ANSI - American National Standards Institute

As outlined in the National Park Service Safety and Occupational Health Program, it is the responsibility of the concessioner to establish and maintain a documented Safety and Occupation Health Program. The program should cover all aspects of the concessioner's operation. A review of the documented Safety and Occupational Health Program will be an integral part of the Annual Safety and Occupational Health Evaluations conducted by appropriate Safety and Occupational Health personnel.

Utilizing the guidelines provided by the WASO Division of Safety Management, the following types of inspections and evaluations will be conducted by appropriate designated personnel:

Initial Inspection

Prior to opening concession facilities to employees and visitors, an initial inspection will be conducted by the concession operator. This would also serve as an excellent training tool to familiarize concession managers and supervisors with their work environment.

Daily And Routine Inspections

In an effort to identify and eliminate Safety and Occupational Health hazards in the concessioner facilities, daily and routine inspections of their respective work areas will be made by designated concessioner employees.

Periodic Inspections

Safety and Occupational Health inspections of facilities will be conducted periodically by personnel designated by the Superintendent. This is for the purpose of identifying the more obvious hazards and deficiencies. Deficiencies noted shall be brought to the attention of the Park Superintendent and the concessioner.

Annual Evaluation Inspection

At least once annually, not later than September 30, a Comprehensive Safety and Occupational Health Evaluation/Inspection of each concessioner facility will be conducted by appropriate Safety and Occupational Health personnel. The annual rating for the concessioner for Safety and Occupational Health will be based on this evaluation/inspection.

ANNUAL SAFETY AND OCCUPATIONAL RATING

Instead of utilizing the numerical or alphabetical rating scheme, facilities and services will be rated Satisfactory, Marginal, or Unsatisfactory annually based on the following criteria:

Upon completion of the documented Annual Evaluation/Inspection, appropriate hazard abatement will be assigned to each finding. Although a facility may have an extensive list of deficiencies/discrepancies, the annual rating will be based on how effectively the concessioner corrects the problems identified.

Copies of the Annual Safety and Occupational Health Evaluation/Inspection will be provided to the appropriate Park Superintendent, concessioner, and the appropriate Regional Concessions Management Office.

HAZARD RATINGS

Identified hazards will be classified in the following four categories.

Imminent Danger:

Fatalities, serious injuries and/or multiple hospitalizations will occur if operation is allowed to continue. Upon identification of an imminent danger hazard, the facility, a portion of the facility, or a specific operation will be closed immediately and will remain closed until the hazard is removed.

Major Deficiency:

The potential of fatalities and serious injuries exist if the deficiency is not corrected.

Major Discrepancies:

The potential for minor injuries exist if the deficiency is not corrected.

Routine: Safety and Occupational Health violations that pose little or no personal injury or property damage threat.

The rating is to be placed on the appropriate line of the Concession Operational Performance Report (Form 10-629).

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR FOOD AND BEVERAGE SERVICE (INCLUDING EMPLOYEE
OPERATION) - No. III

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2 (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard
Element No. 4 (A)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Signs. Refer to General Standard,
Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. Exclude dining rooms from this
section. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)
11. Operating Hours. Refer to General Standard,
Element No. 11. (B)
12. Staffing. Refer to General Standard, Element
No. 12. (A)

D. RATES

13. Menus. Menus should be clean, attractive and be appropriate for the facility and services provided. A sufficient number of menus shall be available to accommodate the customers. The menu should provide a reasonable variety and sufficient number of moderately priced items or entrees for the type of facility. Handwritten changes on the menu are to be kept to a minimum and are only acceptable if the corrections are neatly made. Menu boards for cafeterias and snackbars should be posted and arranged so that they are easily seen. However, in cafeteria operations in lieu of a menu board, individual prices may be provided at the various stations (salad, dessert, beverage, hot food, etc.). Reduced portions and appropriately priced food items should be provided for children where complete meal service is offered.

(B)

14. Authorized Rates. Refer to General Standard Element No. 13.

(A)

E. FOOD AND BEVERAGE SERVICE

15. Food Availability. The items listed on the menu or menu board (for cafeterias and snackbars) should be available during the entire serving period. "Running Out" of certain food items may occur occasionally but should be kept at a minimum. Substitutions are to be comparable to the original item.

(B)

16. Availability of Condiments. Where table service is utilized, condiments should either be located on the table or the usual condiments provided when the food is served. For cafeteria and snackbar operations, the condiments should be convenient and so located as not to impede the speed of service. The condiment area should be kept clean and replenished as necessary.

(B)

17. Customer Attention. Where table service is provided, customers should be seated and provided a menu within a reasonable period of time upon entering the facility and be seated on a first come basis as much as possible

- If reservations are accepted they are to be so scheduled, so that customers are seated at the time of their appointed reservation. High chairs or other suitable chair lifts for children shall be available and provided immediately when requested. (B)
18. Food Temperatures. Food should be served at appropriate temperatures. The evaluator should use reasonable judgment in determining this requirement. (B)
19. Food Prepared to Order. For table service operations, entrees which are customarily cooked to order, should be prepared in accordance with the diner's wishes. (B)
20. Merchandising. Foods should be attractively presented, free of discoloration and arranged on plates so that they are not intermingled. Garnish should be used as is customary and should be attractive and have a fresh appearance. Plate rims should be free of food, juices and drippings. Special attention should be given to attractively displaying food on cafeteria counters and counter tops should be appropriately decorated and clean. Glass fronts should be clean and free of condensation. (C)
21. Table Appearance. Tables should be properly set, linens and/or place mats clean and untorn. Tables should have salt, pepper, sugar, ash tray and napkins neatly and uniformly arranged. If table decorations are provided, they should have a fresh appearance and be neatly arranged. (B)
22. Tableware. Dishes, flatware and glasses are to be clean unspotted, free of discoloration, chips and cracks. (A)
23. Guest Checks. At table service restaurants, checks should be presented upon completion of the meal. They should clearly state the cost of each meal or item and be accurately totaled. Individual checks should be provided on request. (C)

24. Furniture Arrangement and Condition. Tables should be arranged so that diners are not crowded, have a feeling of privacy and can be seated without disturbing other guests. All furniture is to be clean and well maintained. Cardboard, napkins or other material used to stabilize tables and chairs is unacceptable. (C)
25. Floors, Walls, Ceilings and Windows(Dining Room). Floors and floor coverings must be clean, free of litter stains and be well maintained. Vinyl floor coverings must be reasonably polished, free of breaks, chips or worn places. Masonry tile or flagstone grouting must be in good repair and clean. Wood floors are to be waxed or otherwise sealed. Carpeting must be clean and free of stains. Walls, ceilings and windows are to be clean and free of cracks, breaks and stains, and have a fresh appearance. (B)
26. Environment. Food and beverage seating areas are to be well ventilated, free of unpleasant odors, properly decorated and illuminated for the type of facility. (B)
27. Employee Meal Hours. Employees, while on duty, should be assigned periods to eat or take coffee breaks that do not interfere with serving the public. A specific location is to be designated for this purpose. (C)

F. BEVERAGES

28. Beverages. Serving of drinks and other beverages shall be in accordance with what has been approved by the Superintendent. (B)
29. Drink Presentation. The proper type of glass and garnishment (lemon, lime, celery stick, etc.), is to be used as is customary in the industry. (C)
30. Liquor Laws. All applicable Federal, State and county laws concerning liquor service shall be observed. (A)
31. Vending. Refer to General Standard Element No. 16. (B)
32. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-603

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Food and Beverage Service (Including Employee Operations)
Standard No. IIIForm 10-603
(Rev. 6/82)

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date (s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		D. RATES		E. (CONT'D)	
1.	Structure Condition (B) _____	13.	Menus (B) _____	23.	Guest Checks (C) _____
2.	Grounds (B) _____	14.	Authorized Rates (A) _____	24.	Furniture Arrangement & Cond. (C) _____
3.	Public Signs (C) _____	E. FOOD & BEVERAGE SERVICE		25.	Floors, Walls & Ceilings (B) _____
4.	Garbage and Trash (A) _____	15.	Food Availability (B) _____	26.	Environment (B) _____
B. FACILITY INTERIOR		16.	Availability of Condiments (B) _____	27.	Employee Meal Hours (C) _____
5.	Public Restrooms (A) _____	17.	Customer Attention (B) _____	F. BEVERAGE	
6.	Public Signs (C) _____	18.	Food Temperatures (B) _____	28.	Beverages (B) _____
7.	Public and Other Areas (B) _____	19.	Food Prepared to Order (B) _____	29.	Drink Presentation (C) _____
C. OPERATIONAL		20.	Merchandising (C) _____	30.	Liquor Laws (A) _____
8.	Employee Performance (A) _____	21.	Table Appearance (B) _____	31.	Vending (B) _____
9.	Employee Attitude (A) _____	22.	Tableware (A) _____	32.	Beverage Container Guidelines (B) _____
10.	Employee Appearance (A) _____				
11.	Operating Hours (B) _____				
12.	Staffing (A) _____				

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

OPERATING STANDARDS FOR OVERNIGHT ACCOMMODATIONS - STD. NO. IV

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2. (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (A)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Signs. Refer to General Standard,
Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. This does not apply to specific
lodging rooms. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)
11. Reservations and Deposit Refunds. Reservation
cancellation and deposit refund policies shall be
reasonable, not overly restrictive, efficiently handled
and be contained in appropriate advertising material, rate
schedule and/or operative agreement as approved by the

Concessioner Review Program-Operational Performance
Standards

Superintendent, and in conformance with Chapter 29. (B)

12. Identification of Area. Each lodging facility must have an adequate and easily identifiable area for registration and check-out purposes. (C)

13. Operating Hours. In addition to General Standard, Element No. 11, the following will apply. When closed, instructions are to be conspicuously posted, illuminated and provide information as to contacting the management and procedures to follow in event of emergencies. (B)

14. Staffing. Refer to General Standard, Element No. 12. (A)

15. Room Availability. Rooms shall be made available to guest within a reasonable period. Guests should not be required to wait in excess of 2 hours from the established check-out time for the facility and should never be later than 4:00 p.m. If space permits, security shall be provided for visitors' luggage until their rooms become available. (B)

16. Informational Material. The registration area shall have general park and concession information available such as operating hours for park and concessioner services and activities. (C)

D. RATES

17. Authorized Rates. Refer to General Standard, Element No. 13. (A)

18. Posting of Rates. In addition to General Standard, Element No. 14, the following will apply. Rates will be posted in individual rooms or be conspicuously posted at the registration area. (B)

E. ROOM HOUSEKEEPING AND SERVICES PROVIDED

19. Room Organization. Rooms must contain adequate space for guests to move about comfortably, yet

Concessioner Review Program-Operational Performance
Standards

not contain unnecessary furniture or oversized furniture that result in a congested appearance.

Furniture should be so placed as not to impede free movement within the room and result in a well organized unit.

(C)

20. Furniture and Furnishings.

Each guest room is to be adequately furnished and equipped with accessories to meet visitor needs. This includes a sufficient number of chairs, tables, waste basket(s), ash tray(s), coat hangers and luggage racks. All furniture and accessories are to be clean, free of dust and stains and in good condition. All room elements should be color coordinated.

(B)

21. Window Coverings. All window coverings including draperies, blinds and shades, must be cleanable and designed to provide for the guests' privacy. Such coverings must effectively shut out annoying light from outside sources.

(B)

22. Floor, Walls, Ceilings and Windows. Floors and floor coverings must be clean, untorn, free of litter, stains and in good repair. Vinyl floor coverings must be highly polished, free of cracks, chips or otherwise worn, masonry tile grouting must be in good repair and clean; wood floors are to be polished or otherwise sealed. Area rugs must be treated to prevent slippage. Walls, ceilings and windows must be clean, free of defects such as cracks, breaks, torn coverings, stains, etc.

(B)

23. Bedding. Each bed must be made-up with two sheets, one mattress pad, pillow(s) and pillow case(s), blanket and bedspread. All bedding must be clean, untorn and free of stains, and of the proper size for the mattress. Depending on location and climatic conditions, a second blanket for each bed should be available, preferably in the room but at a minimum, obtainable at the registration desk.

(A)

24. Bed Condition. Mattresses are to be clean, odorless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non- protruding, quiet and

Concessioner Review Program-Operational Performance
Standards

unbroken. Frames are to be dust free and in good repair. (A)

25. Illumination. Sufficient lamps must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture. (C)

26. Environment. Guest rooms are to be well ventilated, odorless, and free of insects and rodents or evidence thereof. Doors and windows including screens are to be sufficiently tight to preclude the entry of rodents and insects. (B)

27. Security. All doors and windows accessible to the room must have adequate, operable locking devices and changed as necessary to preclude key duplication and theft problems. Doors must have a double locking system from the inside. Entry doorways must be sufficiently illuminated to allow easy access. (A)

28. Utilities and Appliances. Heaters, air conditioners and other appliances (stoves, refrigerators, cooking and eating utensils, etc.) must be in good condition, operable, adequate, clean and reasonably quiet and available as required by the Superintendent. (B)

29. Vending. Refer to General Standard, Element No. 16. (B)

30. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

F. BATHROOM

31. Linen. Quality, clean linens, in good condition, shall be provided in each bathroom. There shall be one large bath size towel, one hand towel and one face cloth per person. Each bathroom shall also have one bath mat of adequate size. In the event baths are used in common (one bath shared by several rooms), linens are to be placed in the guest room. (A)

Concessioner Review Program-Operational Performance
Standards

one face cloth per person. Each bathroom shall also have one bath mat of adequate size. In the event baths are used in common (one bath shared by several rooms), linens are to be placed in the guest room.

(A)

32. Soap. There shall be at least one individually wrapped soap bar per person. In the event bathrooms are used in common (one bath shared by several rooms), the requirement remains the same and supplies shall be placed in the guest room.

(B)

33. Toilet and Facial Tissue. Toilet and facial tissue must be of good quality and conveniently located. One roll or package of toilet tissue must be held in reserve and conveniently located. Facial tissue shall be provided in each unit bathroom. Toilet facilities used in common with a number of rooms must have a supply of toilet tissue in reserve and be conveniently located.

(B)

34. Drinking Containers. For each person there must be one sanitized, wrapped drinking glass or single service cup. Where single service cups are used, they must be stored in a clean, properly sized enclosed dispenser that is designed for that purpose, if not wrapped. When ice is available, then each room is to contain a clean ice bucket.

(B)

35. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair.

(C)

36. Shower Enclosures. Shower or tub curtains must be unturned, clean and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures (hinged and sliding doors), must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding-door tracks must be clean and in good repair.

(B)

37. Tub/Shower. Showers and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and in good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean and free of mildew and unturned.

(A)

Concessioner Review Program-Operational Performance
Standards

38. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., shall be clean, unpitted and free of cracks. (A)
39. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceiling, doors, and windows, are to be clean and mildew free. (A)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-604

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
(Overnight Accommodations)
Standard No. IV

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

No.	Element	No.	Element	No.	Element
	A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)
1.	Structure Condition (B) _____	14.	Staffing (A) _____	26.	Environment (B) _____
2.	Grounds (B) _____	15.	Room Availability (B) _____	27.	Security (A) _____
3.	Public Signs (C) _____	16.	Informational Material (C) _____	28.	Utilities & Appliances (B) _____
4.	Garbage and Trash (A) _____		D. RATES	29.	Vending (C) _____
	B. FACILITY INTERIOR	17.	Authorized Rates (A) _____	30.	Beverage Container Guidelines (B) _____
5.	Public Restrooms (A) _____	18.	Posting of Rates (B) _____		F. BATHROOM
6.	Public Signs (C) _____		ROOM HOUSEKEEPING AND	31.	Linen (A) _____
7.	Public & Other Areas (B) _____		E. SERVICES PROVIDED	32.	Soap (B) _____
	C. OPERATIONAL	19.	Room Organization (C) _____	33.	Toilet & Facial Tissue (B) _____
8.	Employee Performance (A) _____	20.	Furniture & Furnishings (B) _____	34.	Drinking Containers (B) _____
9.	Employee Attitude (A) _____	21.	Window Coverings (B) _____	35.	Wastebaskets (C) _____
10.	Employee Appearance (A) _____	22.	Floors, Walls, Ceilings & Windows (B) _____	36.	Shower Enclosures (B) _____
11.	Reservation & Deposit Refunds (B) _____	23.	Bedding (A) _____	37.	Tub/Shower (A) _____
12.	Identification of Area (C) _____	24.	Bed Condition (A) _____	38.	Fixtures (A) _____
13.	Operating Hours (B) _____	25.	Illumination (B) _____	39.	Environment (A) _____

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
INITIAL		(A)	(B)	(C)	(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR MERCHANDISING OPERATIONS - NO. V

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Display/Sales and Other Areas. In addition to General Standard, Element No. 7, the following shall apply. Display areas and aisles shall not be cluttered or crowded. Shelving and other display fixtures may be rustic, if appropriate but must be of high quality, good taste and appearance, and be suitably finished as to be easily cleaned and maintained. Professionally manufactured display equipment is recommended. Hanging or displaying of a variety of merchandise from rafters, ceilings ropes, chains, over windows, in doorways or in the aisles, etc., is not acceptable, unless normally hung that way in ordinary use. Overall, the shops shall have an uncluttered appearance. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)

Concessioner Review Program-Operational Performance
Standards

9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)
11. Operating Hours. Refer to General Standard,
Element No. 11. (B)
12. Staffing. Refer to General Standard, Element
No. 12. (A)

D. RATES

13. Authorized Rates and Labeling. In addition to General Standard, Elements No. 13 & 14, the following shall apply. All merchandise must be properly tagged as to selling price. Use of stickers, grease pencils, or stringed price tags are acceptable. Identical items may be marked by display area, rather than on each item. Pricing labels however, shall not conceal point of origin (if foreign made) or other identification. Articles sold as genuine Indian/Eskimo handcraft shall be so labeled. Such items can be identified by display provided the display is exclusively native handcraft. The authenticity of each item shall be clearly stated, so as to distinguish from commercial or machine-made Indian/Eskimo merchandise. Intermingling of other items of different origin is not permissible. Such handcraft items shall be physically separated from manufactured fascimiles, from novelty items, from foreign imports, etc., to reduce purchaser confusion. Handcraft merchandise shall be clearly visible to attract visitors and promote sales. Additionally, producers or associations of producers of genuine handcraft articles must certify in writing to the concessioner that their products are produced according to production standards outlined in the Handcraft and Merchandise policy. (See Chapter 28) (A)
14. Sales Verification. Refer to General Standard,
Element No. 15. (C)

E. MERCHANDISE

15. Authentic United States Handcrafts and Indian/Eskimo Handcraft. Such merchandise shall be checked to see if it is given preferred treatment in the selection,

Concessioner Review Program-Operational Performance
Standards

display, and sales promotion and meets the following production standards.

(A)

- a. Is predominately handmade
- b. Is predominately individually produced under conditions not resembling an assembly line of the factory system; and
- c. Is produced by using only such devices or machines that allow the manual skill of the maker or makers to condition the overall shape and design of each individual product.

16. Other Preferred Merchandise. Articles or items associated with or in interpretive of the area or geographical regions in which the concession shop is located.

(B)

17. Other Acceptable Merchandise. The sales of these items is permitted under the following conditions:

(B)

- a. Commercially or machine manufactured Indian type merchandise, including articles which copy in design handmade jewelry and craft items, which must be labeled individually or collectively.
- b. Foreign imports must be properly labeled to indicate the origin of manufacture. They should not, however, be handled in such quantity as to exclude other merchandise.
- c. Natural merchandise symbolic or representative of those found in the area but not originating in National Park Service areas must be labeled and identified so as to indicate their origin. Plant materials or other natural materials originating in National Park Service areas cannot be sold.

Concessioner Review Program-Operational Performance
Standards

- d. Animal skins, fabricated into such items as leather gloves, skirts, or jackets, mukluks, etc., may be sold provided they are fabricated from commercially raised animals.
- e. Souvenir or novelty articles which identify the park by simple area, name, decal or by picture of the area or popular feature, such as pennants, sweatshirts, T-shirts, linens, etc.

18. Unacceptable Merchandise. Souvenirs or other merchandise may be sold with the exception of the following: (A)

- a. All articles which persons of normal sensitivity might consider obscene, sexually oriented, suggestive, indecent, blasphemous, profane, vulgar, or in ridicule of established institutions, persons or customs. Also, merchandise that is harmful or hazardous.
- b. Archeological specimens or objects of American Indian origin, such as pottery or arrowheads more than 100 years old, regardless of the place of origin.
- c. Plant materials or natural plants and animals and products therefrom, including animal skins, taxidermal specimens, imported and domestic skins or parts of animals, etc., except as permitted in 17(d) above.
- d. Merchandise including film, groceries and other products which have exceeded the producer's specific "Do not sell after" date.

F. OTHER

- 19. Vending. Refer to General Standard, Element No. 16. (B)
- 20. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-605

UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE PERIODIC CONCESSION EVALUATION REPORT (Merchandising Operations) Standard No. V		Form 10-605 (Rev. 6/82)
REGION	PARK	
NAME OF CONCESSIONER	FACILITY/SERVICE	

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
	A. FACILITY EXTERIOR		C. OPERATIONAL		E. MERCHANDISE
1.	Structure Condition (B) _____	8.	Employee Performance (A) _____	15.	Genuine Native & American Indian Handcraft (A) _____
2.	Grounds (B) _____	9.	Employee Attitude (A) _____	16.	Other Preferred Merchandise (B) _____
3.	Public Signs (C) _____	10.	Employee Appearance (A) _____	17.	Other Acceptable Merchandise (B) _____
4.	Garbage and Trash (B) _____	11.	Operating Hours (B) _____	18.	Unacceptable Merchandise (A) _____
	B. FACILITY INTERIOR	12.	Staffing (A) _____		F. OTHER
5.	Public Restrooms (A) _____		D. RATES	19.	Vending (B) _____
6.	Public Signs (C) _____	13.	Auth. Rates & Labeling (A) _____	20.	Beverage Container Guidelines (B) _____
7.	Display/Sales & Other Areas (B) _____	14.	Sales Verification (C) _____		

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

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Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR AUTOMOBILE SERVICE STATIONS - NO. VI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. In addition to General Standard, Element No. 2, the following shall apply. Oil and gas spills are to be cleaned immediately. Waste receptacles must be conveniently located at the gas pumps and be well maintained and emptied as needed. If curbs are painted they shall be repainted as necessary to be maintained in a satisfactory condition. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public Signs. Refer to General Standard, Element No. 6. (C)
6. Public and Other Areas. In addition to General Standard, Element No. 7, all tools, auto lifts compressors and other equipment shall be clean and well maintained. (B)

C. OPERATIONAL

7. Employee Performance. Refer to General Standard, Element No. 8. (A)
8. Employee Attitude. Refer to General Standard, Element No. 9. (A)
9. Employee Appearance. Refer to General Standard, Element No. 10. (A)
10. Operating Hours. Refer to General Standard, Element No. 11. (B)
11. Staffing. Refer to General Standard, Element No. 12. (A)

Concessioner Review Program-Operational Performance
Standards

D. RATES

12. Authorized Rates. In addition to General Standard, Element No. 13, gasoline pumps must have evidence of having been calibrated by an appropriate regulatory authority. (A)
13. Posting of Rates. Refer to General Standard, Element No. 14. (B)

E. AUTOMOBILE MAINTENANCE

14. Preventative Car Care. Except for self-service gasoline sales, each vehicle sold gasoline must have its windshield cleaned, the attendant must offer to check the oil and battery fluid levels, and upon request, tire pressure, radiator water and/or coolant, automatic transmission fluid levels and other checking services are to be performed. Attendant should be alert and tell the customer when tires appear to be low, headlights are burned out or other items noticed that the customer should be aware of. (B)
15. Required Supplies. Automotive supplies should be available that are customary for the industry such as fuses, headlamps, flares, approved loaner gas cans, oil, battery fluid, radiator water and/ or coolant, transmission fluid, pressurized air, radiator hoses, fan belts, etc. If these supplies are not immediately available, then the concessioner should assist the visitor in obtaining them. (B)

F. SERVICE

16. Informational Material. The service station should have general information material available. Park maps (as available) as well as state road maps as appropriate, must be available. (C)
17. Products Sold (GAS). Each service station must have available leaded and unleaded gasoline. (A)
18. Vending. Refer To General Standard, Element No. 16. (B)
19. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

Concessioner Review Program-Operational Performance Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-606

Form 10-608
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
(Automobile Service Stations)
Standard No. VI

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. OPERATIONAL		E. AUTOMOBILE MAINTENANCE	
1.	Structure Condition (B) _____	7.	Employee Performance (A) _____	14.	Preventative Car Care (B) _____
2.	Grounds (B) _____	8.	Employee Attitude (A) _____	15.	Required Supplies (B) _____
3.	Public Signs (C) _____	9.	Employee Appearance (A) _____		
		10.	Operating Hours (B) _____	F. SERVICE	
B. FACILITY INTERIOR		11.	Staffing (A) _____	16.	Informational Material (C) _____
4.	Public Restrooms (A) _____	D. RATES		17.	Products Sold (Gas) (A) _____
5.	Public Signs (C) _____	12.	Authorized Rates (A) _____	18.	Vending (B) _____
6.	Public & Other Areas (B) _____	13.	Posting of Rates (B) _____	19.	Beverage Container Guidelines (B) _____

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	(_____) PRELIMINARY	(Signature)	(Signature)
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

OPERATING STANDARDS FOR TRANSPORTATION SYSTEMS - NO. VII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. In addition to General Standard, Element No. 11, the concessioner is to abide by approved operating schedules that include, (1) departure times, (2) stops, (3) arrival times; and (4) designated routes. (B)
12. Staffing. Refer to General Standard, Element No. 12. (A)

Concessioner Review Program-Operational Performance
Standards

D. RATES

13. Authorized Rates. Refer to General Standard,
Element No. 13. (A)
14. Posting of Rates. Refer to General Standard,
Element No. 14. (B)

E. VEHICLES AND VESSELS

15. Maintenance. Vehicles must have an overall well
maintained and clean appearance. Interior and
exterior must be in good physical condition.
Vehicles must be reasonably free of rust, chipped
or discolored paint. Preventive maintenance must
be performed on each vehicle or vessel on a regu-
larly scheduled basis. (B)
16. Regulations. All applicable regulations related
to the operation of vehicles and vessels must be
followed, i.e., ICC, Coast Guard, CFR Title 36,
Parts 3 and 4. (A)
17. Interpretation. Employees that are providing
interpretive service in conjunction with transpor-
tation must be sufficiently trained to interpret
attractions, comment on resources of the area and
be knowledgeable of area regulations. Interpreta-
tion must be accurate, pertinent and complete.
Concessioner should consult with park staff in deve-
loping training (see NPS, Chapter 2, Item 19 of
Interpretation and Visitor Services Guidelines). (B)

F. OTHER

18. Beverage Container Program. Refer to General
Standard, Element No. 17. (B)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-607

Form 10-607
(Rev. 6/82)

Standard No. VII

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. OPERATIONAL		E. VEHICLES & VESSELS	
1.	Structure Condition (B) _____	8.	Employee Performance (A) _____	15.	Maintenance (B) _____
2.	Grounds (B) _____	9.	Employee Attitude (A) _____	16.	Regulations (A) _____
3.	Public Signs (C) _____	10.	Employee Appearance (A) _____	17.	Interpretation (B) _____
4.	Garbage and Trash (B) _____	11.	Operating Hours (B) _____	F. OTHER	
B. FACILITY INTERIOR		12.	Staffing (A) _____	18.	Beverage Container Program (B) _____
5.	Public Restrooms (A) _____	D. RATES			
6.	Public Signs (C) _____	13.	Authorized Rates (A) _____		
7.	Public and Other Areas (B) _____	14.	Posting of Rates (B) _____		

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR MARINA AND BOAT FACILITIES - NO. VIII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2. (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element
No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)
11. Operating Hours. Refer to General Standard,
Element No. 11. (B)
12. Staffing. Refer to General Standard, Element
No. 12. (A)

D. RATES

13. Authorized Rates. In addition to General Standard, Element No. 13, the following shall apply. All space renters are to be given 30 days notice after a rate increase approval before new rates are made effective. (A)
14. Posting of Rates. Refer to General Standard, Element No. 14. (B)
15. Sales Verification. Refer to General Standard, Element No. 15. (C)
16. Reservation Deposit and Refund Policy. Reservations, cancellation, and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and be contained in appropriate advertising material, rate schedule and/or operating agreement as approved by the Superintendent and in conformance with Chapter 29. (B)

E. RENTAL OPERATIONS

17. Rental Registers. Separate registers shall be kept for short term and long term renters of slips, and dry storage spaces. Registers shall be up to date for all slips, moorings and dry storage areas and be available for examination by authorized representatives of the Government. The registers shall include--name, address, dates of rental period, registration number (State & Local), description of boat and space number. (B)
18. Order of Rental. The concessioner shall rent buoys, slips, and dry storage spaces to eligible visitors on a first come, first served basis. (A)
19. Authorized Rentals. There shall be a standard written rental agreement form, approved by the Superintendent, for each space that has been assigned to a visitor. No slip or mooring shall be rented, used or reserved in any way by any persons for the purpose of the promotional display or sale of boats or boat accessories. (A)

Concessioner Review Program-Operational Performance
Standards

20. Rental Boat Equipment. All boats that are rented for visitor use shall be equipped as required by the U.S. Coast Guard rules and regulations and as provided for in 33 CFR 173-175 and 36 CFR Part 3. (A)
21. Operating Instructions. The concessioner is responsible to see that the renting operator is capable of handling the boat being rented. Specific written and verbal operating instructions must be given to the operator to assure that he is aware of the do's and don't's and is able to properly handle the water craft and possible problems. Instructions and information given are to include such things as climatic weather conditions of the area, what to do in emergency, etc. The operator's liability must be fully explained to him before renting the equipment. (A)
22. Rental Boat Condition. Each boat, prior to being rented, must be in good operating condition and clean. Motors must be inspected, cleaned and serviced as required prior to being rented. (A)
23. Identification. Each slip, mooring and dry storage space shall be numbered uniformly. Marking of rental bouys must conform to applicable Uniform State Waterway Marking System. (C)

F. DOCK OPERATIONS

24. Maintenance. The dock's surface, flotation and ramps must be in good repair, properly positioned and secured. They must be sturdy, free of large cracks, uneven or broken planks, etc. (A)
25. Courtesy Docks. Unless otherwise provided for in the Authorized Rate Schedule, courtesy docks are not to be rented. They must be conveniently located to the entire operation. These docks must be equipped with adequate cleats and bumper protection. Use of such docks shall not exceed the time limit as specified by the Superintendent. (B)
26. Dock Carts. If required, there shall be enough available so as to handle normal peak season demands with only a brief waiting period. Dock carts must be kept in good repair. (C)

Concessioner Review Program-Operational Performance
Standards

27. Security and Lighting. There shall be adequate outside lighting throughout the marina complex for the ramps, docks, slips, and other public areas for night time operations. After scheduled hours, lighting is to be reduced to only provide security in the marina complex. The boat rental area of the marina should have locked, controlled security and be accessible by slip renters only. Dry storage areas are to be properly secured as approved by the Superintendent. Only concession employees will have access to storage areas for moving boats and trailers. Security personnel shall be provided as required by the Superintendent to patrol all areas and provide visitors' boats and equipment protection. (B)
28. Storage Lockers. Storage lockers, if provided for rental visitor use, must have adequate ventilation, be kept clean, well painted, be of sturdy construction, uniform in size and not exceed maximum size as determined by the Superintendent. (C)
29. Boat Sewage Pump Out. Sewage pump out stations that are the concessioner's responsibility must always be clean, well maintained and emptied as required. (A)
30. Dock Accessories. Cleats are to be properly placed and secured for use at each slip area. There shall be no loose or missing cleats. Each rental space must have proper bumpers and be in good condition. Only approved bumper material may be used. Bumpers must be maintained in a usable and effective condition. There may be no loose or missing bumpers. (B)
31. Docks. Railings are to be provided at dangerous or highly traveled locations so as to protect and safeguard the visitors' well being. Railings must be in good repair and sturdy to support visitor use. (B)
32. Utility Lines. All utility lines and connections must be maintained in good operable condition. Electrical outlet must be covered U. L. approved marine type. Utilities should be located at a reasonable distance and easily accessible to each slip as appropriate. (A)
33. Fuel Dock. The area must be kept clean and spills must be taken care of promptly. Dock must be operated in a safe manner. (A)

Concessioner Review Program-Operational Performance
StandardsG. OTHER

34. Vending. Refer to General Standard, Element
No. 16.

(B)

35. Beverage Container Guidelines. Refer to General
Standard, Element No. 17.

(B)

Concessioner Review Program-Operational Performance

Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-608

Std. No. VIII

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
(Marine and Boat Facilities)
Standard No. VIII

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

Form 10-608
(Rev. 6/82)

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
	A. FACILITY EXTERIOR		D. RATES		F. DOCK OPERATIONS
1.	Structure Condition (B) _____	13.	Authorized Rates (A) _____	24.	Maintenance (A) _____
2.	Grounds (B) _____	14.	Posting of Rates (B) _____	25.	Courtesy Docks (B) _____
3.	Public Signs (C) _____	15.	Sales Verification (C) _____	26.	Dock Carts (C) _____
4.	Garbage and Trash (B) _____	16.	Reservation Deposit & Refund Policy (B) _____	27.	Security & Lighting (B) _____
	B. FACILITY INTERIOR		E. RENTAL OPERATIONS	28.	Storage Lockers (C) _____
5.	Public Restrooms (A) _____			29.	Boat Sewage Pump Out (A) _____
6.	Public Signs (C) _____	17.	Rental Registers (B) _____	30.	Dock Accessories (B) _____
7.	Public and Other Areas (B) _____	18.	Order of Rentals (A) _____	31.	Docks (B) _____
	C. OPERATIONAL	19.	Authorized Rentals (A) _____	32.	Utility Lines (A) _____
8.	Employee Performance (A) _____	20.	Rental Boat Equipment (A) _____	33.	Fuel Dock (A) _____
9.	Employee Attitude (A) _____	21.	Operating Instructions (A) _____		G. OTHER
10.	Employee Appearance (A) _____	22.	Rental Boat Condition (A) _____	34.	Vending (B) _____
11.	Operating Hours (B) _____	23.	Identification (C) _____	35.	Beverage Container Guidelines (B) _____
12.	Staffing (A) _____				

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

OPERATING STANDARDS FOR HORSE AND MULE OPERATIONS - IX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. In addition to General Standard, Element No. 2, the grounds shall be cleared of manure daily and the manure removed from the area at least a minimum of once a week. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. In addition to General Standard, Element No. 8, the concessioner's personnel (wranglers, guides, etc.), must be thoroughly knowledgeable of stock handling, park regulations, terrain, first aid and other aspects of their job. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)

Concessioner Review Program-Operational Performance
Standards

12. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

13. Authorized Rates. Refer to General Standards, Element No. 13. (A)
14. Posting of Rates. Refer to General Standard, Element No. 14. (B)

E. STOCK CARE

15. Treatment of Stock. The stock must be properly cared for to assure good feeding and stable and shelter conditions. The stables and shelters are to be cleaned daily and bedding changed weekly. Stock must be fed daily. Stock must be treated properly by the staff and visitors. Cruelty will not be condoned. Shoes must be inspected frequently to ensure that the stock is properly shod and the hoof is in good condition. Stock may not be used when they have sores or are sick or are not otherwise ready for riding. (A)
16. Stock Examination. The stock should be properly examined by a licensed veterinarian periodically or as required but at least annually, each Spring, prior to insect activity. Stock must be immunized and tested as required by the State or County authorities. All stock stabled year-round within a park require annual testing by a veterinarian for Equine Infectious Anemia. (A)
17. Quality and Quantity. Sufficient stock shall be available as advertised and approved. Stock must be curried, cleaned and brushed. The mane and tail shall be neatly trimmed. Stock must be even tempered, gentle and well trained to accommodate inexperienced riders. All stock must be familiar with the terrain. Consideration should be given for the rotation of stock and the weight of riders. (B)

F. SERVICES

18. Equipment Maintenance. All tools and other equipment shall be clean, well-maintained and stored in an uncluttered manner. (B)

19. Reservation Deposit and Refund Policy. Reservation, cancellation, and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and be contained in appropriate advertising material, rate schedule and/or operating agreement as approved by the Superintendent, and in conformance to Chapter 29. (B)
20. Tack Condition. Saddle, saddle bags, blankets, and bridle shall be in good condition, clean and well-maintained. The reins must be tied together instead of hanging separately. (B)
21. Visitor Training. The wrangler must brief all riders on proper and safe procedures such as how to control the horse prior to mounting, and inform the riders how and when to dismount and how to pass the word for help (rider by rider) to the wrangler. The wrangler must aid the riders in mounting and assist the riders on securing carry-on articles, including raincoats. (A)
22. Trail Operation. The inexperienced riders are to be positioned behind the head wrangler and the more experienced rider(s) at the end of the group. (B)
23. Vending Machines. Refer to General Standard, Element No. 16. (B)
24. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

Concessioner Review Program-Operational Performance
Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-609

Form 10-609
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
(Horse and Mule Operational)
Standard No. IX

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. (CONT'D)		F. SERVICES	
1.	Structure Condition (B) _____	10.	Employee Appearance (A) _____	18.	Equipment Maintenance (B) _____
2.	Grounds (B) _____	11.	Operating Hours (B) _____	19.	Reservation Deposit & Refund Policy (B) _____
3.	Public Signs (C) _____	12.	Staffing (A) _____	20.	Tack Condition (B) _____
4.	Garbage and Trash (B) _____	D. RATES		21.	Visitor Training (A) _____
B. FACILITY INTERIOR		13.	Authorized Rates (A) _____	22.	Trail Operation (B) _____
5.	Public Restrooms (A) _____	14.	Posting of Rates (B) _____	23.	Vending Machines (B) _____
6.	Public Signs (C) _____	E. STOCK CARE		24.	Beverage Container Guidelines (B) _____
7.	Public and Other Areas (B) _____	15.	Treatment of Stock (A) _____		
C. OPERATIONAL		16.	Stock Examination (A) _____		
8.	Employee Performance (A) _____	17.	Quality and Quantity (B) _____		
9.	Employee Attitude (A) _____				

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR SKI TOWS AND LIFTS - NO. X

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. In addition to General Standard, Element No. 3, the following also applies. Public information signs related to ski lift, tramway or tow operations including advance information signs alerting skiers as to the direction of and the type of slope, i.e., intermediate, etc., must be properly located where they can be easily read by all persons using the facilities, and must be consistent and equivalent with American National Standards Institute Safety Requirements for Aerial Passenger Tramway (ANSI-B77.1 standards (2.1.12)). (B)
4. Ski Storage. Adequate facilities for ski and pole lean-tos are to be provided near warm-up shacks and service areas. (B)
5. Garbage and Trash. Refer to General Standard, Element No. 4. (B)
6. Boundaries. The boundaries for all ski runs must be clearly marked and identified. (B)

B. FACILITY INTERIOR

7. Public Restrooms. Refer to General Standard, Element No. 5. (A)
8. Public Signs. Refer to General Standard, Element No. 6. (C)
9. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

Concessioner Review Program-Operational Performance
Standards

C. OPERATIONAL

10. Employee Performance. In addition to General Standard, Element No. 8, the concessioner's employees shall be knowledgeable of the ANSI B-77.1 standards (3.2.3). The lift operators and lift attendants must possess a current first aid card or equivalent. The lift operators and attendants must always stay in the immediate vicinity (within 10 feet) of their assigned posts while the lift or tow is in passenger operation. The operators and attendants must be diligent in performing their tasks and address their complete concentration to their tasks while the lift or tow is in operation. The attendant must assure that the skiers are being properly situated on the lift apparatus. (A)
11. Employee Attitude. Refer to General Standard, Element No. 9. (A)
12. Employee Appearance. Refer to General Standard, Element No. 10. (A)
13. Operating Hours. Refer to General Standard, Element No. 11. (B)
14. Staffing. In addition to General Standard, Element No. 12, lift operators and lift attendants shall be so scheduled so that their positions are always covered during operations. (A)

D. RATES

15. Authorized Rates. Refer to General Standard, Element No. 13. (A)
16. Posting of Rates. Refer to General Standard, Element No. 14. (B)
17. Sales Verification. Refer to General Standard, Element No. 15. (C)

Concessioner Review Program-Operational Performance
Standards

E. TOW AND LIFT OPERATIONS

18. Evaluations and Maintenance. The facility shall be examined visibly and audibly daily by the concessioner, to determine that the structures, equipment tension and drive terminals, line towers, cable clearances and other lift line conditions are safe. Also, on a daily basis, the concessioner is to evaluate the safety circuits, communication system, automatic brakes, backstops, and manual brakes prior to opening the operation to skiers. These evaluations are to be in accordance with ANSI B-77.1 (3.3). Additionally, the concessioner shall maintain a daily operational log and a maintenance log to record maintenance work completed. (A)
19. Plans and Standards. The concessioner shall retain in file at least one copy of the American National Standards for Aerial Passenger Tramways (ANSI B-77.1), as well as a copy of the concessioner's Safety and Operational Plan, a copy of the concessioner's Avalanche Rescue Plan, Lift Evaluation Plan, and Structural Fire Plan. These standards must also be known by all those employees responsible for these areas and used as their basic standards. (B)
20. Ski Instructions. Ski instructions shall be performed during the authorized and posted hours and all levels of ski instruction (i.e., beginner, intermediate, advanced and expert) shall be taught provided the appropriate ski runs are available. Ski instructors will be properly certified and shall be tested for competence and knowledge of the standards as well as thoroughly knowledgeable in and properly certified in first aid. (A)
21. Ski Patrol. The ski patrol shall be adequately staffed to cover all ski runs. The ski patrol shall be certified and shall be tested by the concessioner for competence. The ski patrol shall be thoroughly knowledgeable and properly certified in first aid, first aid equipment and rescue operations. The ski patrol should carry radios to expedite first aid and rescue operations. (A)

Concessioner Review Program-Operational Performance
Standards

22. Slope and Lift Maintenance. The ski slopes shall be marked for dangerous obstructions, degree of difficulty and shall be free of debris. Closed slopes and/or areas of slopes closed shall be marked and shown on maps at the lift areas. The slopes shall be checked daily for safety and grooming. The lift areas shall be well maintained and the waiting line shall be regulated. The lift and tow line speed and capacity shall comply with or be equivalent to ANSI B-77.1 (2.1.5). (A)
23. Equipment Maintenance. All tools, lift chairs, T-bars, tramcars and other equipment shall be clean and well-maintained. All towers and other equipment shall be properly protected or guarded to prevent injury. (B)
24. Equipment Rental. Rental skis, bindings, boots and poles shall be operational and well-maintained. (B)
25. First Aid Shelter. The equipment (i.e., communications, first aid, toboggans, rescue/avalanche) shall be adequate and maintained in an orderly manner. (A)
26. Auxiliary Power. All ski lifts and tramways shall be equipped with a standby auxiliary power source which can be used to unload the line in the event of failure of the primary power source. The auxiliary power unit shall not, however, be used until the ANSI B-77.1 standards (2.2.1.2) or equivalent are complied with. (A)
27. Vending. Refer to General Standard, Element No. 16. (B)
28. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-610

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR SUPPLEMENTARY INTERPRETIVE SERVICES - NO. XI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. Also, the formal training program is to include park regulations and management policies, interpretive skills, communication skills, awareness of the park visitor as an individual, understanding of the park resources and familiarity with interpretive techniques used in the park. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)

D. RATES

11. Authorized Rates. Refer to General Standard, Element No. 13. (A)

Concessioner Review Program-Operational Performance
StandardsE. INTERPRETIVE OPERATIONS

12. Program Content. Format and documents must be approved by the Superintendent to ensure the activity fosters public understanding of park resources and values; conforms to the central park theme; has a minimum adverse environmental impact; and accurately describes program objectives as intended for the audience. (Refer to NPS Interpretation Guideline). (B)
13. Program Presentation. Program/activity must convey major interpretive theme as approved by the Superintendent. Judging performance should be based on knowledge obtained from current or most recent research and free of avoidable religious, cultural, and ethnic biases. (B)
14. Advertising. Demonstrations, talks, etc., should be presented as depicted in brochures, etc. Date, locations, duration, physical requirements, and learning experience should correspond with publication matter. Also refer to General Standard, Element No. 11. (B)
15. Public Safety. All program/activities should be designed to ensure the safety and health of the public and staff in compliance with the Occupational Safety and Health Act, U.S. Public Health Service (FDA) protection recommendations, Federal Regulations and Safety Management guidelines. Safety considerations and precaution information should be communicated to the visitor at the onset of, and during the activity. (A)
16. Attendance. The ratio between interpreter and number of visitors must be kept at a level that allows an activity to accomplish its goals. Each group should be limited to a size which would prevent an adverse impact upon area resources. (B)

Concessioner Review Program-Operational Performance
Standards

F. MEDIA

17. Exhibits. An appropriate, routine maintenance schedule should be followed to keep exhibits clean and in good repair. Each permanent exhibit should be inspected routinely to determine whether its content remains accurate and appropriate, and whether its physical condition is satisfactory. (B)
18. Audiovisual Program and Equipment. All AV programs and their equipment should be of acceptable technical quality, and shall be kept clean and the content current. (B)
19. Publications. Concessioner produced publications should be kept accurate, up-to-date, and available in sufficient quantities to meet visitor demand. All publications (advertising matter) should depict the interpretive theme presented and meet established policies (Refer to CFR, Title 36, Sec. 5.1). (B)
20. Media and Content. The program media is to be relevant, effective, and shall adhere to approved plans and servicewide guidelines for interpretation. (B)
21. Communicating Effectively. Presentations should be organized and planned to smoothly and logically convey approved program material. Interpreter(s) should possess public speaking skills and exercise judgment and skill in such areas as the pretalk summary, the talk itself, question/answers, and in giving announcements. (B)
22. Culture or Role Presentation. Demonstrators or costumed interpreters should display activities or roles appropriate to the accurate portrayal of the skills, cultural attitudes, and values of the locality, person, and period being interpreted. (B)
23. Costuming. All historic period costumes or dress used for interpretive presentations must be reproductions that meet standards of authenticity approved by the Superintendent. (C)

Concessioner Review Program-Operational Performance
StandardsG. OTHER

24. Vending. Refer to General Standard, Element
No.16. (B)

25. Beverage Container Guidelines. Refer to General
Standard, Element No. 17. (B)

Standards

Std. No. XI

Form 10-611
(Rev. 6/82)

June 1984

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR GROUP EMPLOYEE - HOUSING - EMPLOYEE STD. NO. XII

INTRODUCTION

The following standard element applies to concessioner group employee housing including dormitories, tents, cabins, trailers, etc. However, many of these may not apply to all employee housing areas. Use only those that apply. They also do not apply to single family dwellings. Safety evaluations will be conducted on all employee housing under the applicable safety standards.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2 (B)
3. Public Signs. In addition to General Standard, Element No. 3, a bulletin board shall be provided for employee/managerial use. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (A)

B. FACILITY INTERIOR

5. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

6. Staff Responsibilities. The concessioner shall be responsible to designate a specific individual(s) to insure that the employee housing facilities are in compliance with NPS standards. (B)

D. ROOM HOUSEKEEPING

7. Room Organization. Rooms must contain adequate space to move about and not contain unnecessary furniture or furniture sized out of proportion with the room size that results in a congested appearance. Furniture should be situated so that a good traffic flow

Concessioner Review Program-Operational Performance
Standards

or furniture sized out of proportion with the room size that results in a congested appearance. Furniture should be situated so that a good traffic flow is realized and lends itself to a well organized unit.

(C)

8. Furniture and Furnishings. Each room is to be equipped with adequate furnishings (i.e., chair, table, desk, ash trays) as appropriate, to accommodate the occupants and yet avoid a congested appearance. All furniture and furnishings are to be clean, and in good condition.

(B)

9. Window Coverings. All window coverings including draperies, blinds, and shades must be cleanable and designed to provide for privacy.

(B)

10. Floors, Walls, Ceilings and Windows. Floors and floor coverings must be clean, untorn, free of litter, stains and in good repair. Vinyl floor coverings must be highly polished, free of cracks, chips or otherwise worn, masonry tile grouting must be in good repair and clean; wood floors are to be polished or otherwise sealed. Area rugs must be treated to prevent slippage. Walls, ceilings and windows must be clean, free of defects such as cracks, breaks, torn coverings, stains, etc.

(B)

11. Bedding. All bedding must be clean, untorn and free of soil or stains, and must be of the proper size for the mattress.

(A)

12. Bed Condition. Mattresses are to be clean, odorless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non-protruding, quiet and unbroken. Frames are to be in good repair.

(A)

13. Illumination. Sufficient lighting must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs must be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture.

(C)

Concessioner Review Program-Operational Performance
Standards

14. Environment. Rooms are to be well ventilated, odorless and free of insects and rodents or evidence thereof. Doors and windows including screens are to be sufficiently tight to preclude the entry of rodents and insects. (B)
15. Security. All doors and windows accessible to the room must have adequate, operable locking devices. These devices should be changed as necessary to preclude key duplication and theft problems. Doors must have a double locking system from the inside. Entry doorways must be sufficiently illuminated to allow easy access. (A)
16. Utilities and Appliances. Heaters, air conditioners and other appliances (stoves, refrigerators, etc.) must be approved for use, (by NPS), be in good condition, operable, adequate, clean and reasonably quiet. (A)
17. Vending. Refer to General Standard, Element No. 16. (B)
18. Beverage Container Guidelines. Refer to General Standard Element No. 17. (B)

E. BATHROOM

19. Linen. If provided by the concessioner, each employee must have available high quality, clean linen in good condition. (A)
20. Toilet Tissue. Toilet tissue must be of good quality and conveniently located. One roll or package must be held in reserve and conveniently located. Toilet facilities used in common with a number of rooms must have a supply in reserve and be conveniently located. (B)
21. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair. Cardboard boxes are unacceptable. (C)
22. Shower Enclosure. Shower or tub curtains must be unorn, clean and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures

(hinged and sliding doors), must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding door tracks must be clean and in good repair.

(B)

23. Tub/Shower. Showers and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and be in good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean and free of mildew.

(A)

24. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., must be unpitted, free of stains and in good condition. Mirrors must be clean and free of cracks.

(A)

25. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceilings, doors, and windows are to be clean, mildew free.

(A)

F. OTHER

26. Storage. Adequate storage areas, shelving, etc., is provided so that all employee possessions and personal equipment are properly stored.

(C)

27. Parking. Employee's vehicles, are parked in designated areas. Parking of additional vehicles, boats, trailers, and other heavy equipment is to be parked in areas approved by the Superintendent.

(C)

28. Pets. The keeping of pets must be in accordance with park rules and regulations.

(B)

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR PUBLIC SHOWERS/LAUNDRIES - STD. NO. XIII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1 (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6 (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)

D. RATES

12. Authorized Rates and Posting. In addition, to General Standard, Elements No. 13 & 14, the following shall

Concessioner Review Program-Operational Performance
Standards

apply. All rates shall be prominently posted for clothes washers, dryers, and showers. The length of time allotted for that rate shall also be prominently posted for clothes dryers and timed showers.

(A)

E. PUBLIC SHOWERS

13. Shower Enclosure. Shower curtains or appropriate enclosure must be of sufficient length and width to prevent water from flowing on to outer areas as well as to assure privacy to the occupant. The enclosure must be clean, free of mildew, untorn or broken and, otherwise in good condition.

(B)

14. Shower Stall. Shower stalls, including floors, walls, ceilings, doors, and attachments must be clean, well maintained, ventilated, and illuminated, free of litter, mildew and offensive odors.

(B)

15. Flooring. Shower floor must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are securely fastened.

(A)

16. Water Supply. Water should be of sufficient temperature and pressure to be comfortable. If faucets are provided they must be accurately marked and operational. Timed showers will be within 10 seconds of the minimum agreed period in the approved rate schedule.

(A)

17. Dressing Area and Clothes Storage. Either lockers or clothes hooks are to be provided and located in close proximity to the shower stall. A dressing area is to be provided and contain adequate seating as appropriate.

(B)

18. Security. Arrangement for the safekeeping of patrons' valuables should be provided or signs shall be conspicuously posted stating that the management is not responsible for patrons' valuables.

(B)

19. Soap and Towels. If such are provided in accordance with the contract or operating plan, then

Concessioner Review Program-Operational Performance
Standards

towels are to be of a large bath size, good quality, good condition, and clean; soap shall be individually wrapped or obtained from a soap dispenser. (A)

20. Instructions. Operating instructions for timed showers must be prominently posted in the shower area. (B)

F. LAUNDRY FACILITIES

21. Vending. In addition to General Standard, Element No. 16, all washers, dryers, and other vending equipment must be clean, well maintained, reasonably free of rust and unspotted. Any equipment that is out of order must have a sign so stating and be returned to service within a reasonable period of time. (B)

22. Laundry Supplies and Change. Soap, bleach and change must be available in close proximity to the facility. (B)

23. Waiting Area. The open laundry area must be equipped with chairs commensurate with the size of the area and number of machines and tables or other suitable surface where patrons can sort and fold clean laundry. Ash trays and waste receptacles are also to be provided. (B)

24. Timing. Timed dryers must be within 10 seconds of the minimum agreed time period as provided for in the approved rate schedule. (B)

25. Instructions. Operating instructions for laundry equipment must be prominently posted in the laundry area, if not printed on the machines themselves. (B)

26. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

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Concessioner Review Program-Operational Performance Standards

EXHIBIT 13
Chapter 21
Page 4
Std. No. XIII

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-613

Form 10-613
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
(Public Showers/Laundries)
Standard No. XIII

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
	A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)
1.	Structure Condition (B) _____	10.	Employee Appearance (A) _____	18.	Security (B) _____
2.	Grounds (B) _____	11.	Operating Hours (B) _____	19.	Soap and Towels (A) _____
3.	Public Signs (C) _____		D. RATES	20.	Instructions (B) _____
4.	Garbage and Trash (B) _____	12.	Authorized Rates & Posting (A) _____		F. LAUNDRY FACILITIES
	B. FACILITY INTERIOR		E. PUBLIC SHOWERS	21.	Vending (B) _____
5.	Public Restrooms (A) _____	13.	Shower Enclosure (B) _____	22.	Laundry Supplies & Change (B) _____
6.	Public Signs (C) _____	14.	Shower Stall (B) _____	23.	Waiting Area (B) _____
7.	Public and Other Areas (B) _____	15.	Flooring (A) _____	24.	Timing (B) _____
	C. OPERATIONAL	16.	Water Supply (A) _____	25.	Instructions (B) _____
8.	Employee Performance (A) _____	17.	Dressing Area & Clothes Storage (B) _____	26.	Beverage Container Guidelines (B) _____
9.	Employee Attitude (A) _____				

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
INITIAL		(A)	(B)	(C)	{ _____ } PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					{ _____ } FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR TRAILER VILLAGES (Short-Term) - STD. NO. XIV

INTRODUCTION

The following standards shall govern the management of transient type of trailer villages. The concessioner must follow the standards and is wholly responsible for compliance therewith by his employee as well as the trailer site occupants. Violation of any of the standards by trailer village tenants shall be grounds for the termination by the concessioner of the occupancy by any tenant within the trailer village. Therefore, it is incumbent upon the concessioner to utilize these standards in developing specific rules for enforcing the standards and to incorporate them into trailer village occupants' space rental agreements.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2. (B)
3. Public Signs. In addition to General Standard,
Element No. 3, the concessioner shall post the
following notices: (C)
 - a. A current copy of these standards;
 - b. A copy of concessioner's rules approved by
the Superintendent.
 - c. Approved rates;
 - d. Fire safety rules; and
 - e. Non-discrimination posters.
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)

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Standards

6. Public Signs. Refer to General Standard,
Element No. 6. (C)

7. Public and Other Areas. In addition to General
Standard, Element No. 7, the concessioner shall
provide at least one public telephone with
unrestricted 24-hour access, with emergency num-
bers clearly posted. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)

9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)

10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)

11. Operating Hours. Refer to General Standard,
Element No. 11. (B)

D. RATES

12. Authorized Rates. Refer to General Standard,
Element No. 13. (A)

13. Posting of Rates. Refer to General Standard,
Element No. 14. (B)

14. Sales Verification. Refer to General Standard,
Element No. 15. (C)

E. SITE RENTAL OPERATIONS

15. Registers. An accurate, up-to-date register of
space occupants shall be maintained and be avail-
able for examination by authorized represen-
tatives of the Government. The registers shall
include: Name, home address, date or rental
period, space number, make, model, year and over-
all length of trailer and State of registration
of trailer. (B)

16. Order of Rental. The concessioner shall rent
trailer sites to visitors on a first come, first
served basis in a manner established by the
Superintendent. (A)

Concessioner Review Program-Operational Performance
Standards

17. Authorized Rentals. The number of actual trailer sites shall not exceed the number approved in the contract or as authorized. Trailer rentals shall be within the designed capacity of the sites. Only one trailer site may be rented to any one individual. No trailer site shall be rented to any person whose trailer is not in conformance with these standards and the concessioner's rules. Trailer sites may be rented from one day to a maximum designated by the Superintendent. However, if the space is not required for a new tenant, the space may be rented for an additional amount of time, not to exceed the established maximum for any stay by any one trailer. Occupancy records shall be maintained and be available as required by the Superintendent. Additionally, trailer sites shall not be rented, used, or reserved in any way by any persons for the purpose of promotional display or sale of trailers or trailer accessories, on-site advertising of any nature, or for any type of business or commercial enterprise. Sub-letting, or renting to a second party, is prohibited.

(A)

18. Rental Agreements. Written rental agreements, conforming to applicable legal requirements, shall be executed for each trailer site rental. This form must be approved by the Superintendent prior to adoption and use. They must include provisions that the occupant will abide by these standards as well as the trailer village rules as a condition of rental. At the time of rental execution, the tenant shall be advised of where a copy of the current standards are posted. Upon the termination or expiration of any rental agreement concerning a trailer site, the trailer shall be immediately removed by the renter. The check-out time shall be included in the rental agreement for transient sites. This time shall be reasonable and consistent with the industry.

(B)

F. TRAILER VILLAGE OPERATIONS

19. Employee Residential Area. Transient sites shall not have long term employees occupying these spaces.

(B)

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Standards

20. Site Boundaries, Site Numbers. All trailer site lot lines are to be adequately and clearly marked by the placement of permanent markers at each lot corner, and each trailer site shall itself be designated by number permanently installed on the site. Such boundary and site markers are to be established and maintained by the concessioner, subject to approval by the Superintendent as to size, design and readability of numbers from the roadway going through the trailer village. (B)
21. Spacing and Trailer Size. No trailer in excess of 8 feet in width or 40 feet in length will be located on a transient site. Transient space sizes shall not be less than 1,200 square feet and preferably 2,000 square feet. (A)
22. Storage of Trailers. Space shall not be provided within the area of any trailer village for the storage of unoccupied trailers, travel trailers, motor homes and recreation vehicles. (B)
23. Parking and Licensing of Vehicles and Boats. No vehicle at a trailer site or any other place within a trailer shall be parked in such a way as to interfere with normal flow of traffic within the trailer village. No tenant's boat and/or boat trailer shall be parked in a trailer site or any other place within a trailer village for more than 48 hours without the prior written approval of the concessioner. No motor vehicle, or any parts thereof, may be parked, stored or otherwise kept on any trailer site or at any other place within the trailer village for any purpose other than primary transportation while a tenant of the trailer village. All vehicles, including boats and boat trailers (boat and trailer is considered one vehicle) located within a trailer village must display current registration.

NOTE: Vehicle means any motorized and/or non-motorized vehicles which are subject to licensing.

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Standards

A trailer site shall contain and provide utility hookups to only one trailer. Two other vehicles may be parked on the site, if space permits, beside the trailer when such vehicles are used exclusively for transportation or recreation while trailer occupant is in residence. Recreation vehicles parked on a site beside a trailer shall not be connected to either the trailer or to the trailer site electrical, gas, water, or sewage drainage lines.

(B)

24. Site Maintenance. It is the responsibility of the concessioner and the tenant to maintain the trailer site in a clean, neat and sanitary manner at all times. No debris or refuse shall be allowed on any trailer site or in any space beneath a trailer. It shall be the responsibility of the concessioner to require that trailer site occupants keep their trailer sites free from litter.

(B)

25. Landscaping. Tenants shall not be permitted to do any planting or landscaping. Such landscaping or planting may be done by the concessioner for shade or screening purposes provided that it has been approved by the Superintendent and consideration given to the following:

(B)

- a. Landscaping shall not alter the natural terrain or a trailer site, including normal normal drainage patterns.
- b. Screen or intersection planting shall not create hazards for vehicle movement within the trailer village.

26. Trailer Expansion. There shall be no expansions or additions to trailers, such as cabanas, ramadas, porches and storage sheds. Window and unenclosed patio awnings are permitted.

(B)

27. Awnings and Shades Structures. Awnings shall be of a demountable metal, plastic or fiberglass manufactured type which are temporary and portable. Small window awnings protruding not more than four 4 from the trailer and fully supported by the trailer are permitted. Patio awnings shall not be permanently enclosed. Roll-up type sun shades are permitted. No shade structures separate from the trailer are permitted.

(B)

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Standards

28. Storage Facilities. There may be no storage compartments of any kind placed upon any transient trailer site. The space beneath a trailer, whether open or skirted, shall not be used for storage of any items. (B)
29. Appliances and Equipment. With the exception of water softeners and air conditioners, no appliances of any kind whatsoever shall be installed or stored outside of any trailer. Only furniture designed and constructed for exterior use is permitted outside. (B)
30. Radio and Television Antennas. Individual radio and TV antennas shall be attached directly to trailers, without guy wires to the ground. They are to remain within the limits of the sites rented. Radio systems which interfere with or disrupt radio or television reception for other tenants are not permitted. Antennas shall be erected so as not to come in contact with power lines, should they fall; and be installed with a minimum 10 foot vertical and horizontal clearance from power lines. All antennas shall also be within the Federal Communication Commission's height restrictions. (B)
31. Pets. If pets are permitted, they must be kept confined or leashed at all times. The concessioner may, at any time, order the removal of any pet from a trailer village when, in his discretion, such removal is necessary for the orderly, safe and peaceful operation of the trailer village. (B)
32. Mechanical Repairs. No major mechanical work may be performed on any vehicles within the trailer village. (B)
33. Open Fires. There shall be no open fires permitted within the transient trailer site section. Examples include fire pits dug in the sand, warming fires and campfires. The use of the following is permitted: Charcoal fires in grill, camping stoves, either gasoline or lanterns, such as Coleman. The concessioner should provide at each transient site a metal, free standing type of charcoal grill as well as a picnic table. (B)

G. OTHER

34. Vending. Refer to General Standard, Element No. 16. (B)
35. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

Concessioner Review Program-Operational Performance

Standards PERIODIC CONCESSION EVALUATION REPORT - FORM 10-614

UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE PERIODIC CONCESSION EVALUATION REPORT Trailer Villages (Short Term) Standard No. XIV	Form 10-614 (Rev.6/82)				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">REGION</td> <td style="width: 50%;">PARK</td> </tr> <tr> <td>NAME OF CONCESSIONER</td> <td>FACILITY/SERVICE</td> </tr> </table>	REGION	PARK	NAME OF CONCESSIONER	FACILITY/SERVICE
REGION	PARK				
NAME OF CONCESSIONER	FACILITY/SERVICE				

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No. Element A. FACILITY EXTERIOR 1. Structure Condition (B) _____ 2. Grounds (B) _____ 3. Public Signs (C) _____ 4. Garbage and Trash (B) _____ B. FACILITY INTERIOR 5. Public Restrooms (A) _____ 6. Public Signs (C) _____ 7. Public and Other Areas (B) _____ C. OPERATIONAL 8. Employee Performance (A) _____ 9. Employee Attitude (A) _____ 10. Employee Appearance (A) _____ 11. Operating Hours (B) _____	Item No. Element D. RATES 12. Authorized Rates (A) _____ 13. Posting of Rates (B) _____ 14. Sales Verification (C) _____ E. SITE RENTAL OPERATIONS 15. Registers (B) _____ 16. Order of Rental (A) _____ 17. Authorized Rentals (A) _____ 18. Rental Agreements (B) _____ F. TRAILER VILLAGE OPERATIONS 19. Employee Residential Area (B) _____ 20. Site Boundaries Site Numbers (B) _____ 21. Spacing & Trailer Size (A) _____ 22. Storage of Trailers (B) _____ 23. Parking & Licensing of Vehicles & Boats (B) _____	Item No. Element F. (CONT'D) 24. Site Maintenance (B) _____ 25. Landscaping (B) _____ 26. Trailer Expansions (B) _____ 27. Awnings & Shade Structures (B) _____ 28. Storage Facilities (B) _____ 29. Appliances & Equipment (B) _____ 30. Radio & Television Antennas (B) _____ 31. Pets (B) _____ 32. Mechanical Repairs (B) _____ 33. Open Fires (B) _____ G. OTHER 34. Vending (B) _____ 35. Beverage Container Guidelines (B) _____
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ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION	NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A) (B) (C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL					
			() FINAL	(Signature)	(Signature)
FOLLOW-UP					

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR TRAILER VILLAGES (LONG TERM RENTALS) - STD. NO. XV

INTRODUCTION

The following standards are for the management of long term rental trailer villages. The concessioner must follow the standards and is wholly responsible for compliance therewith by his employees living in the long-term section as well as the trailer site occupants. Violation of any of the standards shall be grounds for the termination by the concessioner of the occupancy of any tenant within the trailer village. Therefore, it is incumbent upon the concessioner to utilize these standards in developing specific rules for enforcing the standards and to incorporate them into trailer village occupants' space rental agreements.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. In addition to General Standard, Element No. 3, the concessioner shall post the following notices: (B)
 - a. A current copy of these standards;
 - b. A copy of concessioner's rules approved by the Park Service;
 - c. Approved rates;
 - d. Fire safety rules; and
 - e. Non-discrimination posters.
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5 (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)

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Standards

7. Public and Other Areas. In addition to General Standard, Element No. 7, the concessioner shall provide at least one public telephone with unrestricted 24-hour access, with emergency numbers clearly posted. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)

D. RATES

12. Authorized Rates. In addition to General Standard, Element No. 13, the following will apply. When a rate increase for site rental has been authorized, the concessioner shall give all long term trailer village space renters a minimum of 30 days advance notice before the new rates are effective. (A)
13. Posting of Rates. Refer to General Standard, Element No. 14. (B)
14. Sales Verification. Refer to General Standard, Element No. 15. (C)

E. SITE RENTAL OPERATIONS

15. Registers. An accurate, up-to-date register of space occupants shall be maintained and be available for examination by authorized representatives of the Government. The registers shall include: Name, home address, date of rental period, space number, make, model, year and overall length of trailer and State of registration of trailer. A waiting list shall be maintained at all times. (B)
16. Order of Rental. The concessioner shall rent trailer sites to visitors on a first come, first served basis in a manner established by the Superintendent. (A)

17. Authorized Rentals. The number of actual trailer sites, including those rented to employees, shall not exceed the total number approved in the contract or as authorized. Only one trailer allowance per site and only one trailer site may be rented to any one individual. No trailer site shall be rented to any person whose trailer is not in conformance with these standards and the concessioner's rules. The trailer must meet all applicable electrical and mechanical, State, county and local codes. Trailer sites may be rented for a maximum number of days as designated by the Superintendent. However, if the space is not required for a new tenant, the space may be rented for an additional amount of time, not to exceed the established maximum for any stay by any one trailer. Occupancy records shall be maintained and be available as required by the Superintendent. Additionally, trailer sites shall not be rented, used, or reserved in any way by any persons for the purpose of promotional display or sale of trailers or trailer accessories, and/or on-site commercial enterprise. Subletting, or renting to a second party is prohibited.

(A)

18. Rental Agreements. Written rental agreements, conforming to applicable legal requirements, shall be executed for each trailer site rental. The rental form must be approved by the Superintendent prior to adoption and use. It must include provisions that the occupant will abide by these standards as well as the trailer village rules as a condition of rental. At the time of rental execution, the tenant shall receive from the concessioner a copy of the trailer village rules and be advised of where a copy of the current standards are posted. Upon the termination or expiration of any rental agreement concerning a trailer site, the trailer shall be immediately removed by the renter.

(B)

F. TRAILER VILLAGE OPERATIONS

19. Employee Residential Area. Concessioners may own trailers and rent them to employees and conduct these operations as authorized by the Superintendent.
20. Site Boundaries, Site Numbers. All trailer site lot lines are to be adequately and clearly marked by the placement of permanent markers at each lot corner, and each trailer site shall itself be designated by a number permanently installed on the site. Such boundary and site markers are to

(B)

Concessioner Review Program-Operational Performance
Standards

be established and maintained by the concessioner, subject to approval by the Superintendent as to size, design and readability of numbers from the roadway going through the trailer village.

(B)

21. Spacing and Trailer Size. No trailer shall be placed on any trailer site where there is less than 20 feet in every direction between such trailer and any additions thereto and any other trailer and additions to it. Awnings and eaves, however, may intrude into a required separation no more than 2 feet. At least 5 feet shall be maintained between each trailer and any property line and/or roadway adjacent to it. No concessioner shall accept for occupancy within long-term sections of the trailer village any double-wide or tip-out trailers. Existing doublewide and tip-out or expanded trailers will be phased out upon termination or transfer of site rental lease. Triplewide trailers and modular homes are not permitted.

The trailer and accessory building, if present, shall not occupy more than 75% of the designated site area.

(A)

22. Sale of Trailers. The sale of any tenant's trailer is prohibited while it is within the trailer village. When a lease is terminated, the trailer must be removed from the trailer village or other arrangements made as approved by the Superintendent consistent with NPS trailer village rules and regulations.

(A)

23. Storage of Trailers. Space shall not be provided within the area of any trailer village for the storage of unoccupied trailers, travel trailers, motor homes and recreational vehicles.

(B)

24. Parking and Licensing of Vehicles and Boats. No vehicle at a trailer site or any other place within a trailer village shall be parked in such a way as to interfere with normal flow of traffic within the trailer village. No tenants' boats and/or boat trailers shall be parked in a trailer site or any other place within a trailer village for more than 48 hours without the prior written approval of the concessioner. No motor vehicle, or any parts thereof, may be parked, stored or otherwise kept on any trailer site or at any other place within the trailer village for any purpose other than primary transportation while a tenant of the trailer village. All vehicles, including boats and boat trailers (boat and trailer is considered one vehicle) located within a trailer village must display a current registration.

Concessioner Review Program-Operational Performance
Standards

NOTE: Vehicle means any motorized and/or non-motorized vehicle which is subject to licensing.

A trailer site shall contain and provide utility hook-ups to only one trailer. Two other vehicles may be parked on the site, if space permits, beside the trailer when such vehicles are used exclusively for transportation or recreation while the trailer occupant is in residence. Recreational vehicles parked on a site beside a trailer shall not be connected to either the trailer or to the trailer site electrical, gas, water, or sewage lines.

(B)

25. Age and Condition of Trailer. There shall be no restriction as to age of trailer. However, the exterior of the unit must be kept in good repair, have a neat appearance, and meet all electrical and mechanical codes.

(B)

26. Site Maintenance. It is the responsibility of the concessioner and the tenant to maintain the trailer site in a clean, neat and sanitary manner at all times. No debris or refuse shall be allowed on any trailer site or in any space beneath a trailer. It shall be the responsibility of the concessioner to require that trailer site occupants keep their trailer sites free from leaves, dry brush, paper and all other combustible objects.

(B)

27. Landscaping. Planting or landscaping is permitted provided it is approved by the Superintendent and meets the following conditions:

- a. Planting or landscaping shall not be done in front of a trailer if doing so hinders or prevents the attachment of trucks, tractors, or other towing vehicles to its hitching device, and obstructs the trailer's ready removal from the trailer site.
- b. Screen or intersection planting shall not create hazards for vehicle movement within the trailer village.
- c. Anything permanently planted on a trailer site shall not be removed without the prior written approval of the concessioner.

Concessioner Review Program-Operational Performance
Standards

- d. Planting or landscaping shall not alter the natural terrain of a trailer site, including any impediment to its normal drainage.
 - e. Rock gardens, pools, or other landscape features shall not be erected on any trailer site if such features cannot be easily removed by hand by the tenant (without using heavy equipment) within 24 hours upon demand for its removal by the concessioner.
28. Walks, Walkways, Patio Slabs, Retaining Walls and Fences. If a trailer village is located on a slope or in a wash, retaining walls and/or terracing of sites are necessary for flood control. However, when such construction is necessary, it shall be done by the concessioner in accordance with the park planning process, not the tenant. Further, walls of any type and fences shall not be constructed by the tenant on or between any trailer site or sites. All existing fences shall be removed when the tenant vacates the property, or sooner if desired by the concessioner. Walkways and patio slab extensions are permitted provided that they do not create drainage problems, do not interfere with any utilities, and any such work has been approved by the concessioner in writing. The tenant may be required by the concessioner to remove these walkways and patio slab extensions at the tenant's expense at the time of termination of site rental lease. (B)
29. Foundations. No permanent foundations shall be erected for trailers on any existing trailer site within the trailer village. A foundation shall be considered to be any wall or pier constructed of bricks, stones, woodblocks, or any combination thereof, intended to support a trailer. All piers and tie downs shall be constructed to conform to applicable Federal, State and county regulations. (B)
30. Trailer Expansion. There shall be no expansions or additions to trailers, such as cabanas, ramadas, enclosed porches, or expando units. Unscreened porches, window and unenclosed patio awnings, and one outside storage compartment are permitted. (B)

Concessioner Review Program-Operational Performance
Standards

31. Awnings and Shade Structures. Awnings shall be of demountable metal, plastic or fiberglass manufactured type which can be easily removed, and shall be securely anchored. Small window awnings protruding not more than 4 feet from the trailer and fully supported by the trailer are permitted. Patio awnings shall not be enclosed. Roll-up type sun shades are permitted. No shade structures separate from the trailer are permitted (B)
32. Storage Facilities. Each site may have placed upon it only ONE (1) outside storage compartment for dead storage only. Any such storage compartment shall be of a commercially manufactured prefabricated type or professionally made, having a capacity of not more than 640 cubic feet and not in excess of 10 lineal feet in any dimension. Any storage compartment placed on a trailer site may rest on a concrete pad, but must meet the site spacing requirements and must be easily removal from the trailer site. (B)
33. Appliances and Equipment. With the exception of water softners and air conditioners, no appliances of any kind shall be installed, or stored, outside of any trailer unless within an approved storage compartment. Only furniture designed and constructed for exterior use is permitted outdoors. (B)
34. Radio and Television Antennas. Individual radio and TV antennas shall be attached directly to trailers without guy wires to the ground. Radio systems which interfere with or disrupt radio or television reception for other tenants are not permitted. Antennas shall be erected so as not to come in contact with power lines, should they fall; and be installed with a minimum 10 foot vertical and horizontal clearance from the lines. All antennas shall also be within the Federal Communication Commission's height restrictions as well as remain entirely within the boundaries of the trailer site. (B)
35. Pets. If pets are permitted, they must be kept confined or leashed at all times. The concessioner may, at any time, order the removal of any pet from a trailer village when, in his discretion such removal is necessary for the orderly, safe and peaceful operation of the trailer village. (B)
36. Vehicle Repairs. No major mechanical work may be performed on any vehicles within the trailer village. (B)

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37. Porches. Porches may be installed on trailer sites provided that they are in conformance with the spacing requirements. Any porch installed shall be constructed in such a manner that it may be easily removed from the trailer site, and shall not be enclosed with any material, including permanently installed screening. Roll-up sun shades are permitted. (B)
38. Skirting. Skirting is required on all trailers in long-term sites. Skirting material, of light metal or wood, shall be neat, attractive, and securely installed. (B)
39. Liquid Propane Gas Tanks. L. P. G. storage tanks shall not exceed 125 gallons at each trailer site. (A)
40. Fuel Oil Tanks. Fuel oil tanks shall be the type manufactured for the purpose of storing fuel oil. Fifty-five (55) gallon barrels are not considered adequate to meet these standards. Fifty-five (55) gallons of fuel oil shall be the maximum amount stored at each trailer site. (B)
41. Outdoor Showers. Installation of outdoor showers by tenants at individual trailer sites are not permitted. (C)
42. Vending. Refer to General Standard, Element No. 16. (B)
43. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

Concessioner Review Program-Operational Performance
Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-615

Form 10-615
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Trailer Villages (Long Term Rentals)
Standard No. XV

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element	
A. FACILITY EXTERIOR			E. SITE RENTAL OPERATIONS			
1.	Structure Condition (B) _____	15.	Registers (B) _____	29.	Foundations (B) _____	
2.	Grounds (B) _____	16.	Order of Rentals (A) _____	30.	Trailer Expansion (B) _____	
3.	Public Signs (B) _____	17.	Authorized Rentals (A) _____	31.	Awnings & Shade Structures (B) _____	
4.	Garbage and Trash (B) _____	18.	Rental Agreements (B) _____	32.	Storage Facilities (B) _____	
B. FACILITY INTERIOR			F. TRAILER VILLAGE OPERATIONS			
5.	Public Restrooms (A) _____	19.	Employer Residential Area (B) _____	33.	Appliances & Equipment (B) _____	
6.	Public Signs (C) _____	20.	Site Boundaries, Site Numbers (B) _____	34.	Radio & Television Antennas (B) _____	
7.	Public and Other Areas (B) _____	21.	Spacing & Trailer Size (A) _____	35.	Pets (B) _____	
C. OPERATIONAL			22.	Sale of Trailers (A) _____	36.	Vehicle Repairs (B) _____
8.	Employee Performance (A) _____	23.	Storage of Trailers (B) _____	37.	Porches (B) _____	
9.	Employee Attitude (A) _____	24.	Parking & Licensing of Vehicles & Boats (B) _____	38.	Skirting (B) _____	
10.	Employee Appearance (A) _____	25.	Age & Condition of Trailer (B) _____	39.	Liquid Propane Gas Tanks (A) _____	
11.	Operating Hours (B) _____	26.	Site Maintenance (B) _____	40.	Fuel Oil Tanks (B) _____	
D. RATES			27.	Landscaping (B) _____	41.	Outdoor Showers (B) _____
12.	Authorized Rates (A) _____	28.	Walks, Walkways, Patio Slabs, Retaining Walls & Fences (B) _____	42.	Vending (B) _____	
13.	Posting of Rates (B) _____			43.	Beverage Container Guidelines (B) _____	
14.	Sales Verification (C) _____					

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR THERMAL WATER BATHHOUSES - NO. XVI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2, and Bathhouse Maintenance Agreements. (B)
3. Public Signs. Refer to General Standard,
Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Signs. Refer to General Standard,
Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. (B)

C. OPERATIONAL

8. Employee Certification. The employment of Bathhouse
personnel is subject to the written approval of the
Superintendent. Employee engaged as physical thera-
pist, physical therapy technician, physical therapy
aid, masseur, masseuse, or bath attendant must be
properly licensed or certified in accordance with 36
C.F.R. 21.8. (A)
9. Employee Health Examination. Employees who come in
direct personal contact with bathers or pool users
must have current health examinations in accordance
with 36 C.F.R. 21.7. (A)

Concessioner Review Program-Operational Performance
Standards

10. Report of Bathhouse Employment. Bathhouse managers are required to submit a monthly employment report to the Superintendent listing all employees by name and position. This is to ensure that all bathhouse employees are properly certified and have current health examinations. (B)
11. Employee Performance. Refer to General Standard, Element No. 8. (A)
12. Employee Attitude. Refer to General Standard, Element No. 9 (A)
13. Employee Appearance. Refer to General Standard, Element No. 10. (A)
14. Operating Hours. Refer to General Standard, Element No. 11 (B)
15. Application and Certificate for Baths. Bathhouses must use an approved application form that complies with the requirements of 16 U.S. Code 374. An example of an acceptable form is included in the appendix of the Bathhouse Operations Manual. (A)
16. Approved Bath Directions. Bathhouse employees must administer baths for persons who are not undergoing medical treatment, or who lack specific bathing directions prescribed by a registered physician in accordance with the approved bath directions listed on page C-2 of the Bathhouse Operations Manual. (A)
17. Bath Tickets. Bathhouses must provide bath tickets of a type approved by the Superintendent. Multiple bath tickets must be bound in ticket books. Both ticket books and punch-card type bath tickets must display a serial number, the name of the bathhouse, the number of baths, the total price and redemption values, a statement that the tickets are good for use without limit from date of sale, and a statement that the tickets are good for redemption one year from date of sale. (A)
18. Floors. Water splashed or spilled from tubs and showers must be mopped up as soon as possible. Standing water on floors must not be allowed to create a slipping hazard. (A)

Concessioner Review Program-Operational Performance
Standards

D. RATES

19. Authorized Rates. Refer to General Standard, Element No. 13. (A)
20. Posting of Rates. Refer to General Standard, Element No. 14. (B)
21. Sales Verification. Refer to General Standard, Element No. 15. (C)

E. EQUIPMENT

22. Bath Tubs. Tubs must be cleaned and disinfected after each use. Stains must be prevented, if possible, or removed as major build-up occurs (A)
23. Vapor Cabinets. Heavy encrustations or discolorations on floors must be prevented, if possible, or removed as major build-up occurs. (C)
24. Hydrotherapy Pools - PMC. Pools must be chlorinated at 0.5 ppm for a minimum of 30 minutes prior to discharge in accordance with the instructions of the Department of Health. Pools must be thoroughly cleaned and disinfected after discharge of thermal water. (A)
25. Thermometers. Thermometers of a type that accurately records water temperature must be provided for each bath tub. Thermometers must be maintained and periodically checked for accuracy. (A)
26. Bath Mitts. Used mitts must be marked for identification by the bath attendant, and must be stored in such a way that they do not come in contact with other mitts. Abandoned mitts must be disposed of as refuse. (A)
27. Clocks. A sufficient number of clocks must be provided in bath halls, pack rooms, and massage rooms so bath attendants and bathers can check on the length of time spent in these areas. (A)

Concessioner Review Program-Operational Performance
Standards

28. Linens. Bathhouses must furnish a sufficient number of sheets and towels for bathers. Bath attendants and helpers must remove all used sheets and towels from bath halls, pack and cooling rooms immediately after use. Sheets and towels must be laundered before being reused. (A)
29. Shower Curtains. Curtains must be of sufficient length and width to prevent water from flowing out of the shower area. The curtain must be clean, free of encrustations and mildew, and in good condition. (B)
30. Shower Stalls. Shower stalls including floor, wall, ceiling, and attachments shall be clean, well maintained, ventilated, and adequately illuminated, free of litter, mildew, and offensive odors. (B)
31. Soap. Soap used in bath halls must be furnished in unbreakable containers, except for special soap that may be prescribed for a bather by a registered physician. (B)

F. OTHER

32. Vending. Refer to General Standard, Element No. 16. (B)
33. Beverage Container Guidelines. Refer to General Standard, Element No. 17 (B)

Concessioner Review Program-Operational Performance
Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-616

Form 10-616
(6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Thermal Water Bathhouses

Standard No. XVI

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)	
1.	Structure Condition (B) _____	12.	Employee Attitude (A) _____	23.	Vapor Cabinets (C) _____
2.	Grounds (B) _____	13.	Employee Appearance (A) _____	24.	Hydrotherapy Pools (A) _____
3.	Public Signs (C) _____	14.	Hours of Operation (B) _____	25.	Thermometers (A) _____
4.	Garbage and Trash (B) _____	15.	Application & Certificate for Bath (A) _____	26.	Bath Mitts (A) _____
B. FACILITY INTERIOR		16.	Approved Bath Directors (A) _____	27.	Clocks (A) _____
5.	Public Restrooms (A) _____	17.	Bath Tickets (A) _____	28.	Linen (A) _____
6.	Public Signs (C) _____	18.	Floors (A) _____	29.	Shower Curtains (B) _____
7.	Public and Other Areas (B) _____	D. RATES		30.	Shower Stalls (B) _____
C. OPERATIONAL		19.	Authorized Rates (A) _____	31.	Soap (B) _____
8.	Employee Certification (A) _____	20.	Posting of Rates (B) _____	F. OTHER	
9.	Employee Health Exams (A) _____	21.	Sales Verification (C) _____	32.	Vending (B) _____
10.	Report of Bathhouse Employment (B) _____	E. EQUIPMENT		33.	Beverage Container Guidelines (B) _____
11.	Employee Performance (A) _____	22.	Bath Tubs (A) _____		

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR RIVER-RUNNING SERVICES -NO. XVII

A. PERSONNEL

1. Performance. Refer to General Standard, Element No. 8. (A)
2. Attitude. Refer to General Standard, Element No. 9. (A)
3. Appearance. Refer to General Standard, Element No. 10. (A)
4. Staffing. Refer to General Standard, Element No. 12. (A)
5. Qualification Requirements. All employees, especially guides, must meet the qualification requirement established in the contract/permit. (A)

B. EQUIPMENT

6. Watercraft. All watercraft requirements as established in the contract/permit are met. (A)
7. Emergency Equipment. Safety equipment as required by the contract/permit is provided and in good working condition. Approved U.S. Coast Guard personal floatation devices be provided of a size to properly fit each person on board. (A)
8. Transportation Equipment (shuttle service). Where provided, vehicles must be safe, well maintained, in good physical condition, and have a clean appearance. All operators shall have a valid operators license as required by law. (A)
9. Other Equipment. All other equipment as required in the contract/permit is provided and in good condition. (B)

C. ENVIRONMENTAL PROTECTION

10. Sanitation. All contract/permit requirements for sanitation procedures (including waste disposal and garbage/trash) are closely adhered to. (A)
11. Restricted Areas. All restricted area requirements are observed. (A)
12. Other Requirements. Other contract/permit and regulation requirements regarding environmental concerns are met. (B)

D. RATES

13. Authorized Rates. Refer to General Standard, Element No. 13 (A)
14. Reservation and Deposit Refunds. Reservation, cancellation, and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and be contained in appropriate advertising material, rate schedule and/or Operating Agreement as approved by the Superintendent and in conformance with Chapter 29. (B)

E. SERVICES

15. Interpretative Services. All contract/permit requirements for interpretive services are met. Adequate training shall be provided by the concessioner, in cooperation with the National Park Service, to assure that guides provide an acceptable standard of interpretation as determined by the Superintendent. (B)
16. Food Service. If provided, it shall meet the level indicated in the concessioner's brochure and approved by the National Park Service. It shall be provided in accordance with applicable Public Health Service requirements Standard C 10 above. (A)
17. Safety. All safety procedures as required by regulation and/or the contract/permit are adhered to. (A)
18. General Operations. Concessioner shall provide well conducted tours from the standpoint of rafting skills, and meeting general contract/permit trip requirements. (B)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-617

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
River-Running Services
Standard No. XVII

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

Form 10-617
(6/82)

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. PERSONNEL		B. (CONT'D)		D. RATES	
1.	Performance (A) _____	8.	Transportation Equipment (A) _____	13.	Authorized Rates (A) _____
2.	Attitude (A) _____	9.	Other Equipment (B) _____	14.	Reservation & Deposit Refunds (B) _____
3.	Appearance (A) _____			E. SERVICES	
4.	Staffing (A) _____	C. ENVIRONMENTAL PROTECTION		15.	Interpretative Services (B) _____
5.	Qualification Requirements (A) _____	10.	Sanitation (A) _____	16.	Food Service (A) _____
B. EQUIPMENT		11.	Restricted Areas (A) _____	17.	Safety (A) _____
6.	Watercraft (A) _____	12.	Other (B) _____	18.	General Operations (B) _____
7.	Emergency Equipment (A) _____				

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR BOAT RENTAL OPERATIONS - NO. XVIII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1, if boat rental service is operated from any type of land based or floating structure. (B)
2. Grounds. Refer to General Standard, Element No. 2, if any walkways and/or grounds are associated with structure from which a boat rental service is operated (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4, if rental service is operated from any type of land based or floating structure. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5, if rental service is operated from any type of land based or floating structure. Also applicable to visitor orientation/boat "staging" area facilities. (A)
6. Public Signs. Refer to General Standard, Element No. 6 (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. Also applicable to visitor orientation/boat "staging" area facilities. (B)

C. OPERATIONAL

8. Employees' Performance. Refer to General Standard, Element No. 8. Also, it is the concessioner's responsibility to assure that persons hired for specialized positions (such as boat mechanic or marina security guard) meet minimum qualifications accepted by the industry for those positions. (A)

9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)
12. Staffing. Refer to General Standard, Element No. 12. (A)
13. Qualification Requirements. All employees meet the qualification requirements in the concessioner's permit. Drivers must be 18 years old and licensed to drive. (A)

D. RATES

14. Authorized Rates. Refer to General Standard, Element No. 13. (A)
15. Posting of Rates. Refer to General Standard, Element No. 14. (B)
16. Rental Service Verification. All boat rentals shall be accurately and legibly recorded. Receipts shall be given for all boat rental transactions. (C)
17. Reservation and Deposit Refunds. Reservation cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and be contained in appropriate advertising material, rate schedule and/or Operating Agreement as approved by the Superintendent and in conformance with Chapter 29. (B)

Concessioner Review Program-Operational Performance
Standards

E. EQUIPMENT AND SERVICES

18. Authorized Vessels. The number and type of rental vessels shall meet the specifications of the contract or permit, park planning documents, and be consistent with services determined necessary and appropriate by the Superintendent. (A)
19. Maintenance. (1) Rental vessels shall be in good operating condition, and have a clean, well-maintained appearance. Interior and exterior shall be free of rust, chipped or peeling paint, or excessively worn seating/benches. A preventive maintenance program shall be established and followed for each rental vessel. The concessioner shall employ skilled mechanics (2) Maintain emergency chase boats in numbers sufficient for responsive, efficient operation of the boat rental service; and (3) Motors, paddles, and life jackets must be inspected, cleaned and serviced as required prior to being rented. (1)(B)
(2)(A)
(3)(B)
20. Vessel Identification. Identification of all rental vessels shall be in accordance with U.S. Coast Guard and National Park Service regulations. For emergency identification, houseboat identification numbers shall be of sufficient size to be visible from a distance. If an area is patrolled by air, identification numbers should also be maintained on the top deck, to assist in identifying disabled vessels. Smaller vessels only need to be identified by local and State regulations. (B)
21. Equipment. All vessels rented to visitors shall have the appropriate safety equipment, as required by U.S. Coast Guard and National Park Service regulations. When a vessel is equipped with sanitation equipment, such as waste water and sewage holding tanks, such equipment shall be of sufficient capacity and in good working order, to prevent discharge of water directly into NPS-administered waters, as defined in 36 CFR, Section 3.17.

Other equipment, appliances, and supplies shall be provided as specified in the concession contract/permit,

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Standards

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advertising material, and rate schedule, as approved by the Superintendent. All such rental equipment/appliances/supplies shall be in good working order. Visitors shall be instructed in the proper operation of all such equipment prior to their departure from the boat rental area.

(A)

22. Visitor Orientation/Instruction. It shall be the concessioner's responsibility to assure that the renting operator is capable of handling the vessel as well as any problems which may arise while the vessel is being rented. Prior to releasing the vessel to the visitor, specific written and/or verbal instructions shall be given to the operator, including emergency procedures and equipment, navigational "rules-of-the-road", areas closed by the Superintendent, weather conditions, and the operator's liability.

Whenever possible, loading/off-loading and operational instruction for more specialized vessels (i.e., sailboats, houseboats) shall be accomplished in an area separate from launching/haul-out areas for visitors with their own vessels, and away from authorized tour vessel operations.

(A)

23. Insurance. Rental vessels shall be sufficiently insured for personal liability and property damage.

(A)

24. Interpretive Guide Service: Permit requirements for interpretive and guide services are met. Adequate training shall be provided by the concessioner, in cooperation with the NPS, to assure guides provide an acceptable standard of interpretation, as determined by the Superintendent. Fishing guides must be licensed by the State.

(B)

F. OTHER

25. Vending. Refer to General Standard, Element No. 16.

(B)

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26. Beverage Container Guidelines. Refer to General Standard, Element No. 17

(B)

G. ENVIRONMENTAL PROTECTION

27. Sanitation. All contract/permit requirements for sanitation procedures (including waste disposal garbage/trash removal of damaged equipment) shall be closely adhered to. If food service is offered, it will meet the standards indicated in the concessioner's brochure and all food service sanitation procedures as established by NPS and public health agencies are adhered to.

(A)

28. Restricted Area. Regulations and permit requirements concerning restricted areas, river closings, and access areas are observed.

(B)

H. GENERAL OPEATIONS

29. Transportation. Concessioner provides timely and adequate service for transportation of private boats and moving private vehicles.

(B)

30. Reports. Concessioner submits required monthly and yearly forms and these are submitted in a timely fashion.

(A)

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-618

Form 10-618
(6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Boat Rental Operations
Standard No. XVIII

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The comments checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
	A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)
1.	Structure Condition (B) _____	12.	Staffing (A) _____	22.	Visitor Orientation & Instruction (A) _____
2.	Grounds (B) _____	13.	Qualification Req. (A) _____	23.	Insurance (A) _____
3.	Public Signs (C) _____		D. RATES	24.	Interpretative Service (B) _____
4.	Garbage and Trash (B) _____	14.	Authorized Rates (A) _____		F. OTHER
	B. FACILITY INTERIOR	15.	Posting of Rates (B) _____	25.	Vending (B) _____
5.	Public Restrooms (A) _____	16.	Rental Verification (C) _____	26.	Beverage Container Guidelines (B) _____
6.	Public Signs (C) _____	17.	Reservation Deposit & Refund Policy (B) _____		G. ENVIRONMENTAL
7.	Public and Other Areas (B) _____		E. EQUIPMENT & SERVICES	27.	Sanitation (A) _____
	C. OPERATIONAL	18.	Authorized Vessels (A) _____	28.	Restricted Area (B) _____
8.	Employee Performance (A) _____	19.	Maintenance (1) (B) _____ ; (2) (A) _____ ; (3) (B) _____		H. GEN. OPER.
9.	Employee Attitude (A) _____	20.	Vessel Identification (B) _____	29.	Transportation (B) _____
10.	Employee Appearance (A) _____	21.	Equipment (A) _____	30.	Reports (A) _____
11.	Operating Hours (B) _____				

[illegible]

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)	() PRELIMINARY	(Signature)	(Signature)
INITIAL							
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR PRIMITIVE/RUSTIC LODGING - NO. XIX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element
No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. This does not apply to specific
lodging rooms or tents. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)
11. Operating Hours. In addition to General Standard,
Element No. 11, the following shall apply: When
closed, instructions shall be conspicuously posted,

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Standards

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illuminated, and provide information as to contacting the management and procedures to follow in event of emergencies.

(B)

12. Staffing. Refer to General Standard, Element No. 12.

(A)

13. Reservations and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and contained in appropriate advertising material rate schedule and/or Operating Agreement as approved by the Superintendent.

(B)

14. Accommodation Availability. Accommodations shall be made available to guests within a reasonable period. Guest should not be required to wait in excess of 2 hours from the established check-out time for the facility and should never be later than 4:00 p.m. Security shall be provided for visitors' luggage until their accommodations become available.

(B)

15. Identification of Area. Each lodging facility must have an adequate and easily identifiable area for registration and check-out purposes.

(C)

16. Informational Material. The registration area shall have general park and concession information available, such as operating hours for park and concessioner services and activities.

(C)

D. RATES.

17. Authorized Rates. Refer to General Standard, Element No. 13.

(A)

18. Posting of Rates. In addition to General Standard, Element No. 14, the following will apply: Rates will be posted in accommodations or will be conspicuously posted at the registration area.

(B)

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E. ACCOMMODATIONS

19. Unit Organization. Accommodations must contain adequate space for guests to move about comfortably, yet not contain unnecessary furniture or oversized furniture that results in a congested appearance. Furniture should be so placed as to not impede free movement within the accommodation and to result in a well organized unit. (C)
20. Furniture and Furnishings. Each unit shall be adequately furnished and equipped to meet visitor needs. This includes a sufficient number of chairs, tables, wastebasket(s), ash tray(s), and coat hangers. All furniture and accessories are to be clean, free of dust and stains, and in good condition. Cooking utensils, flatware and dishes shall be clean when provided. Clearance of wood and oil stoves to combustible materials, including partitions and walls constructed with wood studs, shall not be less than that recommended by Underwriters Laboratories, Inc. Fireproof pads shall be placed under wood burning stoves to prevent fire. (B)
21. Window Coverings. All window coverings including draperies, blinds, and shades must be cleanable and designed to provide for the guests' privacy. Such coverings must effectively shut out light from outside sources. (B)
22. Floors, Walls, Ceilings, and Windows. Floors and floor coverings must be clean, untorn, and free of litter. Wood floors shall be either painted or well sealed. Area rugs must be treated to prevent slippage. Walls, ceilings, and windows shall be clean. (B)
23. Bedding. All bedding provided must be clean, untorn, free of stains and of the proper size for the mattress. Depending on location and climatic conditions, a second blanket for each bed should be available, preferably in the room, but at a minimum obtainable at the registration area. (A)

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Standards

24. Bed Condition. Mattresses are to be clean, odorless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non-protruding, quiet and unbroken. Frames are to be clean and in good condition. All cots provided in furnished units (i.e., tents) shall be durable, clean, odorless, and in good condition. Sagging is to be minimal and consistent with the normal expectation of a camping experience. (A)

25. Illumination. Sufficient lamps must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs must be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture. (C)

Tents or Other Facility without Electrification. At least one L.P. lantern per furnished tent shall be provided. (B)

26. Environment. All units are to be well ventilated, odorless, and free of insects and rodents or evidence thereof. Doors and windows, including screens, are to be sufficiently tight to preclude the entry of rodents and insects. (B)

27. Security. All doors and windows accessible to the unit must have adequate, operable locking devices and must be changed as necessary to preclude theft problems. Doors shall have a double locking system from the inside. Canvas-sided buildings are excluded from the double locking requirement, with the stipulation that other means of providing security for visitors' valuables is available. (A)

28. Utilities and Appliances. Heaters, air conditioners, and other appliances (stoves, refrigerators, etc.) must be in good condition, operable, adequate, clean and reasonably quiet, and available as required by the Superintendent. Clear instructions concerning their use must be provided and conspicuously located. Handles

Concessioner Review Program-Operational Performance
Standards

for wood stoves shall be provided for the removable plates. Spark arresters and stove flues must be cleaned regularly and must be in good condition.

(A)

F. BATHROOMS (individual or central)

29. Linen. Where required, quality, clean linens, in good condition, shall be provided. There shall be one large bath-sized towel and one face cloth per person. In the event baths are used in common, linens are to be placed in the unit.

(A)

30. Soap. There shall be at least one individually wrapped soap bar per person. In the event bathrooms are used in common, the requirement remains the same and supplies shall be placed in the unit.

(B)

31. Toilet Tissue. Toilet tissue must be of good quality and conveniently located. One roll or package must be held in reserve and conveniently located.

(B)

32. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair. In the event bathrooms are used in common, the waste container in the women's restrooms shall be covered.

(C)

33. Drinking Containers. Where required, for each person there must be one sanitized, wrapped drinking glass or single service cup. Where single service cups are used, they must be stored in a clean, properly sized, enclosed dispenser that is designed for that purpose, if not wrapped. When ice is available, each unit is to contain a clean ice bucket.

(B)

34. Shower Enclosures. Shower or tub curtains must be unturned, clean, and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures (hinged and sliding doors) must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding door tracks must be clean and in good repair.

(B)

35. Tub/Shower. Shower and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and in

Concessioner Review Program-Operational Performance
Standards

good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean, free of mildew, and untorn.

(A)

36. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., shall be clean, unpitted, and free of cracks.

(A)

37. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceiling, doors and windows are to be clean and mildew free.

(A)

G. OTHER

38. Vending. Refer to General Standard, Element No. 16.

(B)

39. Beverage Container Guidelines. Refer to General Standard, Element No. 17.

(B)

Concessioner Review Program-Operational Performance

Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-619

Form 10-619
(5/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT

Primitive/Rustic Lodging
Standard No. XIX

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)	
1.	Structure Condition (B) _____	14.	Accommodation Availability (B) _____	27.	Security (A) _____
2.	Grounds (B) _____	15.	Identification of Area (C) _____	28.	Utilities and Appliances (A) _____
3.	Public Signs (C) _____	16.	Informational Material (C) _____	F. BATHROOMS	
4.	Garbage and Trash (B) _____	D. RATES		29.	Linen (A) _____
B. FACILITY INTERIOR		17.	Authorized Rates (A) _____	30.	Soap (B) _____
5.	Public Restrooms (A) _____	18.	Posting of Rates (B) _____	31.	Toilet Tissue (B) _____
6.	Public Signs (C) _____	E. ACCOMMODATIONS		32.	Wastebins (C) _____
7.	Public and Other Areas (B) _____	19.	Unit Organization (C) _____	33.	Drinking Containers (B) _____
C. OPERATIONAL		20.	Furniture and Furnishings (B) _____	34.	Shower Enclosures (B) _____
8.	Employee Performance (A) _____	21.	Window Coverings (B) _____	35.	Tub/Shower (A) _____
9.	Employee Attitude (A) _____	22.	Floors, Walls, Ceilings and Windows (B) _____	36.	Fixtures (A) _____
10.	Employee Appearance (A) _____	23.	Bedding (A) _____	37.	Environment (A) _____
11.	Operating Hours (B) _____	24.	Bed Condition (A) _____	G. OTHER	
12.	Staffing (A) _____	25.	Illumination (C) (B) _____	38.	Vending (B) _____
13.	Reservation and Deposit Refund (B) _____	26.	Environment (B) _____	39.	Beverage Container Guidelines (B) _____

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR GOLF COURSES - STD. NO. XX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element
No. 2. (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5 (A)
6. Public Signs. Refer to General Standard, Element
No. 6. (C)
7. Public and Other Areas. Refer to General Standard
Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard,
Element No. 8. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10 (A)
11. Operating Hours. Refer to General Standard, Element
No. 11. (B)
12. Staffing. In addition to General Standard, Element
No 12 if lessons are offered, a qualified P.G.A.

teaching professional or equivalent shall be available. Also the service of a qualified golf course superintendent shall be available at all times.

(A)

D. RATES

13. Authorized Rates. Refer to General Standard, Element No. 13.

(A)

14. Posting of Rates. Refer to General Standard, Element No. 14.

(B)

15. Sale Verification. Refer to General Standard, Element No. 15.

(C)

16. Rain Check and Deposit Refunds. Rain check, cancellation, and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and be contained in an appropriate advertising material, rate schedule and/or Operating Agreement as approved by the Superintendent and in conformance with Chapter 29.

(B)

17. Rental Service Verification. All equipment rentals shall be accurately and legibly recorded. Receipts shall be given for all equipment rental transactions.

(C)

E. EQUIPMENT AND SERVICES

18. Authorized Equipment. The number and type of rental equipment meet the specifications of the contract or permit, park planning documents, and be consistent with services determined necessary and appropriate by the Superintendent.

(A)

19. Maintenance. Rental equipment shall be in good operating condition, and have a clean, well-maintained appearance. Interior and exterior shall be free of rust, chipped or peeling paint, or excessively worn seating/benches. A preventive maintenance program shall be established and followed for each rental vehicle.

(A)

20. Equipment. All vehicles rented to visitors shall have the appropriate safety equipment.

21. Visitor Orientation/Instruction. The clubhouse (sales area) shall be arranged and signed to guide the visiting player to the course or driving range with minimum congestion.

Each group of players shall be provided with a score card typical of the industry which includes a map or diagram of the course, the rules of golf which apply, both general and specific, and appropriate safety instructions (lighting, etc.)

(C)

22. Order of Rental and Starting. The concessioner shall rent equipment, sell tickets and assign starting times to eligible visitors on a first come, first served basis.

(A)

F. GOLF COURSE PROPER.

23. Accessories.

Markers. At least one pair of tee markers shall be provided at each tee. Additional pairs may be provided to indicate tee-off position for different levels of skill. Markers should be color coded according to accepted golfing practice.

Ball Washers. Ball washers shall be provided as specified in the contract. Any ball washers on the course shall be in good repair with an adequate level of clean washing solution and one or more towels.

Benches. Benches shall be maintained in a safe and usable condition.

Flags. Greens shall be marked with standard numbered flags; when the course is designed so that two or more sets of similar number exist, they shall be differentiated by color, shape or other easily recognizable means.

(A)

24. Maintenance of Golf Course. The various features of the golf course; i.e., tees, greens, fairways, roughs, traps, etc., will be maintained in accordance with current standard for golf course and turfgrass management.

(A)

G. OTHER

25. Informational Material. The registration area shall have general park and concession information available such as operating hours for park and concessioner services and activities. (C)
26. Practice Facilities. Practice greens and driving ranges shall be maintained in a condition such that they serve their intended use in a safe and pleasing manner. (A)
27. Vending. Refer to General Standard, Element No. 16 (B)
28. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

Concessioner Review Program-Operational Performance

Standards PERIODIC CONCESSION EVALUATION REPORT - FORM 10-620

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT

Form 10-620
(6/82)

Golf Course Operations
Standard No. XX

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No. Element A. FACILITY EXTERIOR 1. Structure Condition (B) _____ 2. Grounds (B) _____ 3. Public Signs (C) _____ 4. Garbage and Trash (B) _____ B. FACILITY INTERIOR 5. Public Restrooms (A) _____ 6. Public Signs (C) _____ 7. Public and Other Areas (B) _____ C. OPERATIONAL 8. Employee Performance (A) _____ 9. Employee Attitude (A) _____ 10. Employee Appearance (A) _____	Item No. Element C. (CONT'D) 11. Operating Hours (B) _____ 12. Staffing (A) _____ D. RATES 13. Authorized Rates (A) _____ 14. Posting of Rates (B) _____ 15. Sales Verification (C) _____ 16. Rain check Deposit & Refund Policy (B) _____ 17. Rental Service Verification (C) _____ E. EQUIPMENT & SERVICES 18. Authorized Equipment (A) _____ 19. Maintenance (A) _____ 20. Equipment (B) _____	Item No. Element E. (CONT'D) 21. Visitor Orientation & Instruction (C) _____ 22. Order of Rental and Starting (A) _____ F. GOLF COURSE PREP. 23. Accessories (A) _____ 24. Maintenance of Golf Course (A) _____ G. OTHER 25. Informational Material (C) _____ 26. Practice Facilities (A) _____ 27. Vending (B) _____ 28. Beverage Container Guidelines (B) _____ Note: Food and Beverage Service and Merchandising should be evaluated on applicable forms.
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ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

Concessioner Review Program-Operational Performance
Standards

OPERATING STANDARDS FOR SWIMMING POOL FACILITIES -NO. XXI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard,
Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2,
except that all pools shall be enclosed with a fence
at least 6 feet high. The fencing should be of a
type that cannot be easily climbed. (B)
3. Public Signs. Refer to General Standard, Element
No. 3. (C)
4. Garbage and Trash. Refer to General Standard,
Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard,
Element No. 5. (A)
6. Public Notices and Signs. Refer to General Standard,
Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard,
Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. In addition to General Standard,
Element No. 8, the concessioner's employees (life-
guards) shall possess a current First Aid Card or
equivalent. Lifeguards (where required) must always
stay in the immediate vicinity of their assigned posts
while pool is in operation. (A)
9. Employee Attitude. Refer to General Standard,
Element No. 9. (A)
10. Employee Appearance. Refer to General Standard,
Element No. 10. (A)

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Standards

11. Operating Hours. Refer to General Standard, Element No. 11. (B)

12. Staffing. A qualified lifeguard shall be on duty during all bathing hours. When a lifeguard is not provided, a warning sign to that effect shall be placed in plain view and the pool shall neither be used by children without an adult attendant nor by adults swimming along. (A)

D. BATHHOUSE

13. Shower Stalls. Shower stalls including floor, walls, ceiling, doors, and attachments shall be clean, well maintained, ventilated, and adequately illuminated, free from litter, mildew, and offensive odors. (B)

14. Flooring. Flooring shall be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are securely fastened. (A)

15. Dressing Area and Clothes Storage. Either lockers or clothes hooks are to be provided and conveniently located. (B)

16. Security. Arrangements for the safekeeping of guests valuables should be provided or sign shall be conspicuously posted stating that the management is not responsible for guest valuables. (B)

E. SWIMMING POOL AND POOL AREA

17. Walls (sides) and Floors. Pool walls and floor surfaces shall be clean, smooth, impervious, and free of algae. Overflow gutters shall be clean, unblocked, and in good working order. (A)

18. Apron Area. Pool shall be surrounded by an impervious apron extending at least 4 feet from the edge of the pool. Apron and coping shall be kept clean and free of cracks. (B)

19. Depth Markings. Depth markings of 4 inches minimum height shall be placed at regular intervals along the pool periphery and spaced at not more than 25

Concessioner Review Program-Operational Performance
Standards

foot increments. Small pools shall have markings at the deep end and shallow ends and at the 5 foot point.

(B)

20. Ladders. A means of egress shall be provided at end of the pool and also at the shallow end if the distance from the apron is greater than 2 feet. One mode of egress shall be provided for each 75 feet of pool perimeter, but in no case less than two separate models shall be provided. Ladders shall have a clearance of not more than 6 inches, nor less than 3 inches between ladder and pool wall, shall be equipped with handrails and non-slip surfacing.

(B)

21. Water Quality and Filtration System. Water shall be clean and free of algae and all State and/or local standards shall be followed.

(A)

F. SAFETY

22. First Aid Kit. A standard 24-unit first aid kit shall be kept filled and readily accessible for emergency use.

(A)

23. Reaching Poles and Buoys. One or more light poles, no less than 12 feet long, shall be available for making reaching assists. One or more buoys in good condition not more than 15 inches in diameter shall be available at strategic points adjacent to the pool.

(A)

G. OTHER

24. Vending. Refer to General Standard, Element No. 16.

(B)

25. Beverage Container Guidelines. Refer to General Standard, Element No. 17.

(B)

Concessioner Review Program-Operational Performance

Standards

PERIODIC CONCESSION EVALUATION REPORT - FORM 10-621

Form 10-621
(8/82)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
PERIODIC CONCESSION EVALUATION REPORT
Swimming Pool Facilities
Standard No. XXI

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

NOTICE TO CONCESSIONER: The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
A. FACILITY EXTERIOR		C. (CONT'D)		E. (CONT'D)	
1.	Structure Condition (B) _____	10.	Employee Appearance (A) _____	19.	Depth Markings (B) _____
2.	Grounds (B) _____	11.	Operating Hours (B) _____	20.	Ladders (B) _____
3.	Public Signs (C) _____	12.	Staffing (A) _____	21.	Water Qual./Fil. Sys. (A) _____
4.	Garbage and Trash (B) _____	D. BATH HOUSE		F. SAFETY	
B. FACILITY INTERIOR		13.	Shower Stalls (B) _____	22.	First Aid Kit (A) _____
5.	Public Restrooms (A) _____	14.	Flooring (A) _____	23.	Reaching Poles and Buoys (A) _____
6.	Public Notices and Signs (C) _____	15.	Dressing Area & Clothes Storage (B) _____	G. OTHER	
7.	Public and Other Areas (B) _____	16.	Security (B) _____	24.	Vending (B) _____
C. OPERATIONAL		E. SWIMMING POOL AND POOL AREA		25.	Beverage Container Guidelines (B) _____
8.	Employee Performance (A) _____	17.	Walls (sides) and Floors (A) _____		
9.	Employee Attitude (A) _____	18.	Apron Area (B) _____		

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					() PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					() FINAL	(Signature)	(Signature)

REMARKS:

SUPERINTENDENT'S COPY

CONCESSIONER REVIEW PROGRAM - CONTRACT/PERMIT COMPLIANCE

A. GENERAL

The purpose of the Contract/Permit Compliance Program is to determine a concessioner's adherence to the terms and conditions of its contract/permit and to identify specific responsibilities in administering concession authorizations on a day-to-day basis. The responsibility for the administration of concession contracts and permits rests with the Superintendent. The Superintendent or his/her authorized representative is to conduct contract/ permit compliance reviews of each concessioner once a year and is to formally notify the concessioner of those items needing improvement. It should be noted at this point that at the beginning of the year concessioners should be briefed on the requirements that they will be evaluated on and informed that they should pursue problem areas as they arise to avoid surprises at the time of the concessioner review.

B. REVIEW AND RATING PROCEDURES

In an effort to reduce the amount of paper used in the Concessioner Review Program, we have combined the actual rating form for contract/permit compliance with the contract/permit compliance checklist. The checklist should be used as a point of reference and guide to identify, document and evaluate those concessioner contract/permit elements which directly affect compliance. The actual compliance rating is located at the top of Form 10-630 and the Contract/Permit Compliance Checklist follows. If required for clarification, explanatory remarks may be entered within each section. Substantive comments which bear favorably or unfavorably on a concessioner's compliance must be entered in the narrative section of the Annual Overall Rating Report (Form 10-631).

Certain of the elements of contract/permit compliance have been labeled as "Special Attention Items." These items have been defined as those items which, if not carried out in accordance with the terms of the contract/permit, can cause the contract/permit to be terminated. There are six "Special Attention Items" in the contract/permit compliance checklist which have been identified with an asterisk (*). These items are:

1. Building and Improvement Program
2. Maintenance
3. Utilities
4. Accounting Records and Reports
5. Franchise Fee
6. Insurance

When reviewing the special attention items, careful attention should be given to such factors as length of time late, correspondence with the concessioner in an attempt to correct the situation, uniform treatment of all concessioners, the concessioner's responsiveness and other mitigating circumstances.

After reviewing all elements of the checklist, the Superintendent then assigns an annual rating for the concessioner's contract/ permit compliance performance for the year, either "Satisfactory", "Marginal", or "Unsatisfactory."

If a concessioner has been in compliance with all or most elements of the checklist for the entire year, it should receive a "Satisfactory" rating.

The "Marginal" rating is provided to recognize situations which warrant strong action but have not yet reached the point where termination should be recommended.

If the concessioner has consistently failed to comply with any of the special attention items, or has consistently failed to comply with several of the other items, or if non-compliance with any one item has been so extensive and deliberate as to become a major issue, the rating should be "Unsatisfactory."

Samples of the forms needed to conduct contract/permit compliance evaluations under this program are provided in Exhibit 1 to this chapter and their use is explained in the following procedures. Should assistance be needed in completing these forms do not hesitate to contact your Regional Concessions Office.

C. INSTRUCTIONS FOR COMPLETING COMPLIANCE FORMS

The following instructions correspond numerically to the applicable sections of the contract. Even though some of the sections do not require compliance, they have been included for numbering purposes only so that they follow the Standard Contract Language. The following instructions may also be used in reviewing a concessioner's compliance with a permit, but they do not coincide with the permit numbering system. Space has been provided at the end of the checklist so that the reviewer can note other requirements found in some permits that require compliance, such as, timely submission of use data, approval of advertising material, and items of an administrative nature that require compliance.

*1. Building And Improvement Program. (Item 1, of Checklist.)

If the contract requires a building and/or improvement program, review Section 1 of the contract and determine from your records if the concessioner is in compliance with the time frame requirements of that section and the dollar amount of expenditures for improvements as defined in the contract (see item 5 below). Plans, drawings, and specifications must have been approved by the Service, and the starting and completion dates should have occurred within the stipulated time frames and documented. Any deviations from the building program requires formal amendment of the contract and must be supported by a written request from the concessioner stating reasons beyond its control warranting any relief of the contract requirements.

Such factors as the elapsed time, follow-up correspondence, the concessioner's responsiveness, and other mitigating circumstances should be considered.

(INFORMATION TO BE PROVIDED AT A LATER DATE ON ACCESSIBILITY OF FACILITIES TO HANDICAPPED INDIVIDUALS.)

If no building and improvement program is required, mark Form 10-630 (Item 1) "N/A". If the program has been completed mark the form "YES".

2. Accommodations, Facilities And Services. (Item 2, of Checklist.)

Services actually being provided should be checked against those authorized in the contract to ascertain that only authorized and required services are provided. Determine if additional accommodations, facilities and services are required. If the concessioner has a preferential right to provide additional accommodations, facilities and services, and such are required, comment on the concessioner's willingness to comply with its right or willingness to waive that right.

3. Plant, Personnel And Rates. (Item 3, of Checklist.)

Review the physical plant to determine whether it meets the needs for providing the authorized services. Personnel should be observed to determine (a) if there is an adequate number to provide satisfactory service, (b) if there is a need for some type of park-related or concessioner-related training program, and (c) if there is a need for some type of visual identification as concessioner employees.

Each concessioner who has 50 or more employees and (a) has a contract of \$50,000 or more; or (b) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (c) serves as a depository of Government funds in any amount; or (d) is a financial

institution which is an issuing and paying agent for U.S. savings bonds and saving notes in any amount, shall develop a written affirmative action compliance program for each of its establishments. Affirmative action plans should be developed by the concessioner within 120 days of the commencement of the contract. Upon execution of a contract/permit, and as part of the annual review of the operation, the Superintendent should determine if the concessioner has an applicable approved affirmative action plan. The affirmative action plan is to be filed by the concessioner with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor, and will be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan or 45 days have elapsed and the Director of OFCCP has not disapproved such plan.

A check should be made to see if EEO posters are appropriately and prominently displayed at employment offices or other employee assembly points. These posters must be displayed where the contents will be conspicuous to all persons seeking use of the facility.

Rates are reviewed during the Concession Review Program to assure that they are the current rates approved by the Superintendent during the last rate review period. All rates approved by the Superintendent must be properly documented by supporting rate approval studies in accordance with the Rate Approval Program handbook.

The appropriate block on form 10-630 (Item 3) should be marked.

4. Government Land And Improvements. Not a Compliance item. Not included on checklist.

*5. Maintenance. (Item 4, of Checklist.)

Review any schedules of maintenance or maintenance agreements and determine if the concessioner is providing required maintenance responsibilities to the satisfaction of the Secretary, including that on concessioner and government-owned buildings and assigned lands. If the establishment of a maintenance fund is required, the Superintendent should establish a method for monitoring it, and annually document for the record that the fund has been maintained and that expenditures are made on required maintenance projects. The Superintendent should also ascertain that all maintenance items identified by him have been adequately completed. If the concessioner is not satisfactorily carrying out its maintenance responsibilities, service to visitors will suffer and future expenditure by the Government, the concessioner, and/or its successor could be required unnecessarily.

6. Concessioner Improvements (Possessory Interest). (Item 5, of Checklist.)

Possessory interest is the concessioner's ownership in Government acquired or constructed facilities and/or concessioner acquired or constructed facilities and as such, is a potential liability of the United States. The possessory interest assets claimed by the Concessioner are shown on Schedule "D" of the Annual Financial Report. Schedule "K" describes the possessory interest assets added during the past year. The Superintendent has the responsibility to approve beforehand all possessory interest improvements. Therefore, he should review these two schedules to verify approval of any additions as Possessory Interest Assets. Based on this responsibility, he also must closely monitor the concessioner's obligations regarding possessory interest assets, which are:

a. Obtaining NPS approval of plans prior to construction; (The Superintendent should document approval of those items he considers possessory interest items for later reference.)

b. Separating possessory interest assets from other capital assets on Schedule D of the Annual Financial Report; and

c. Segregating possessory interest acquisitions and disposals by appropriate column on Schedule K of the Annual Financial Report.

The concessioner's schedule of assets in which it claims a possessory interest should be reviewed annually by the Superintendent to determine if there are any possessory interest assets that are not listed on the appropriate exhibit to the contract or if any such assets should be deleted. During the rating period the Superintendent should make sure that Schedules "D" and "K" of the Annual Financial Report are accurate with respect to possessory interest assets. In addition, Schedules "D" and "K" should be compared with Exhibit "D" to the contract and, if necessary, amend Exhibit "D" as appropriate. NOTE: Contracts issued prior to 1979 do not contain such an exhibit.

*7. Utilities. (Item 6, of Checklist.)

If the concessioner is overdue in paying for utilities provided by the NPS, or has not paid previous bills in a timely manner during the rating period, the concessioner should not be considered in compliance with this section of the contract. However, such factors as the length of time late, correspondence with the concessioner in an attempt to collect fees, the concessioner's responsiveness, and other mitigating circumstances, should be considered. If the concessioner was not billed for these services in a timely manner by the NPS, he should not be rated as being in noncompliance with this element. Utility rates should be determined as defined in the contract or by any recent policy established since the contract was awarded.

*8. Accounting Records And Reports. (Item 7, of Checklist.)

If the annual financial report has not been received or properly audited, the concessioner cannot be considered in compliance with the terms of the contract/permit. However, the Superintendent may use his judgment if the report has been received late. Such factors as the length of time late, correspondence with the concessioner in an attempt to receive the report, the concessioner's responsiveness and other mitigating circumstances should be considered.

*9. Franchise Fees. (Item 8, of Checklist.)

If franchise fees, including building use fees, have not been paid in a timely fashion by the concessioner, the concessioner cannot be considered in compliance with the terms of the contract. Please keep in mind that under current contract language, some concessioners are required to submit fees more than once a year and some on a monthly basis. Interest charges are often due on late submittals.

If payments have been received late, the Superintendent must use his judgment to determine the concessioner's compliance with the terms of the contract. Such factors as the length of time late, follow-up correspondence, the concessioner's responsiveness and other mitigating circumstances should be considered.

10. Bond And Lien. (Item 9 of Checklist)

If a bond was required to guarantee performance of the contract, give the amount and the date posted. If no bond was required check "N/A" on Form 10-630.

11. Termination. Not a compliance item. Not included on checklist.

12. Compensation. Not a compliance item. Not included on checklist.

13. Assignment Or Sale Of Interest. (Item 10 of Checklist)

In the event that a concessioner is entertaining an offer from a potential buyer, the incumbent concessioner and prospective buyer must submit a complete "proposal" to the National Park Service requesting approval of the transaction. If the proposed transaction is acceptable, approval is given in one of two ways. Where it is a stock purchase, the sale is approved by letter. When it is an asset purchase, an assignment and acceptance document is required. In either case, the terms and conditions of any contingent NPS approval must have been fully met by both parties to a sale before it merits affirmative compliance.

14. Approval Of Subconcession Contracts. (Item 11, of Checklist.)

All contracts and agreements proposed to be entered into by the concessioner with respect to the exercise by others of privileges granted by its contract must be approved by the Regional Director before becoming effective. Generally, subconcessions are not encouraged and will not be approved unless the proposed subconcession operation is essential to provide better service to the public and unless the prime concessioner furnishes the basic facilities and/or services to the subconcessioner. Concessioner agreements with coin-operated machine companies do not normally meet the criteria for a subconcession and, therefore, should not be considered as subconcession contracts.

Approved subconcession contracts require the concessioner to pay to the Secretary within a prescribed time, fifty percent of any and all fees, commissions, or compensation payable to the concessioner by the subconcessioner. This is in addition to the franchise fee payable on the total gross receipts of the subconcessioner as provided for in the concession contract. If no third party exists, check "N/A" on Form 10-630.

If there are any agreements or arrangements between the concessioner and a third party(ies) that fall within the above policy guidelines, the Superintendent should take the necessary steps to have the concessioner either enter into a subconcession contract with the third party, or provide the service itself, or to obtain a separate concessioner pursuant to a SOR prospectus.

*15. Insurance. (Item 12, of Checklist.)

Concession contracts require concessioners to carry appropriate insurance. A review of the insurance carried should be made to determine its adequacy and the findings documented. Procedures for review of the concessioner's insurance are set forth in Chapter 23 of this Guideline. Following these procedures the Superintendent should complete the Insurance Review Checklist (Chapter 23, Exhibit 3) and then use the Insurance Review Checklist to complete section 12 of the Contract Compliance form. A copy of the Insurance Review form should be attached to the WASO and Regional copies of the Contract/Permit Compliance form.

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICEForm 10-630
(Rev. 7/83)

SUPERINTENDENT'S ANNUAL CONCESSIONER CONTRACT/PERMIT COMPLIANCE REPORT

FOR THE 19__ OPERATING YEAR

PARK _____ CONCESSIONER _____

CONTRACT NO. _____ PERMIT NO. _____

	COMPLIANCE		
	YES	NO	N/A
*1. Building and Improvement Program	_____	_____	_____
2. Accommodations, Facilities & Services	_____	_____	_____
3. Plant, Personnel and Rates	_____	_____	_____
*4. Maintenance	_____	_____	_____
5. Possessory Interest	_____	_____	_____
*6. Utilities	_____	_____	_____
*7. Accounting Records and Reports	_____	_____	_____
*8. Franchise Fee	_____	_____	_____
9. Bond and Lien	_____	_____	_____
10. Assignment	_____	_____	_____
11. Subconcession	_____	_____	_____
*12. Insurance	_____	_____	_____

* Denotes "Special Attention" Items

CONTRACT/PERMIT COMPLIANCE RATING: _____
(Satisfactory, Marginal, Unsatisfactory)

Superintendent's Signature _____

Date _____

Concessioner's Signature _____

Date _____

(To signify receipt of rating)

CONTRACT/PERMIT COMPLIANCE CHECKLIST

*1. BUILDING AND IMPROVEMENT PROGRAM (Item 1 of Instructions)

A. Does the contract contain a building & improvement program? YES _____ NO _____

B. If the answer to (A) above is yes,

(1) Is any portion of such program applicable to this rating period? YES _____ NO _____

(2) If (1) above is yes, have plans and specifications been submitted and approved by the Superintendent?
YES _____ NO _____

(3) What portion(s) of the building and improvement program has been completed during this rating period?

(4) What was starting date as stated in the contract? _____

(5) When was actual starting date? _____

(6) When is completion date? _____

(7) If already completed, give date: _____

(8) Has the concessioner submitted documentation to evidence expenditures of the program?

YES _____ NO _____

(9) (ACCESSIBILITY OF FACILITIES TO HANDICAPPED PERSONS TO BE ADDED AT A LATER DATE)

2. **ACCOMMODATIONS, FACILITIES AND SERVICES** (Item 2 of Instructions)

A. Are all accommodations, facilities and services required/authorized in this contract/permit being provided?
YES _____ NO _____

B. Are any services being provided that are not authorized under this contract/permit?

YES _____ NO _____ If yes, please list:

C. (1) Does the concessioner have a preferential right to new or additional service? YES _____ NO _____;

(2) If such new or additional services have been identified by the NPS, has the concessioner agreed to provide them? YES _____ NO _____

If the answer to (2) above is no, explain: _____

3. **PLANT, PERSONNEL AND RATES** (Item 3 of Instructions)

A. Does the concessioner meet the criteria for needing an affirmative action plan? YES _____ NO _____
(See item #3 of instructions for criteria.)

If the answer is no, disregard the next question. if yes:

(1) Does the concessioner have a written affirmative action plan? YES _____ NO _____

If the answer is no, explain: _____

B. Are EEO posters furnished and adequately displayed? YES _____ NO _____

C. Have current rates used by the concessioner been approved by the Superintendent and properly documented by supporting rate approval studies in accordance with the Rate Approval Program handbook? YES _____ NO _____

If the answer is no, explain: _____

*4. MAINTENANCE (Item 5 of Instructions)

- A. Has the concessioner fulfilled the terms of any maintenance agreement including the dollar amount if stipulated? YES _____ NO _____. If "NO" give reason: _____

5. POSSESSORY INTEREST (Item 6 of Instructions)

- A. Has the concessioner (a) made any capital improvements to government improvements? YES _____ NO _____. (b) acquired any possessory interest in concessioner's improvements not listed on the exhibit to the contract during this rating period? YES _____ NO _____. If yes, list: _____

- B. Was prior written approval given by the Service for these improvements? YES _____ NO _____

*6. UTILITIES (Item 7 of Instructions)

- A. List utility services provided by the park for the concessioner: _____

- B. If the concessioner is charged for the service(s) provided, has he paid for them in a timely manner? YES _____ NO _____

*7. ACCOUNTING RECORDS AND REPORTS (Item 8 of Instructions)

- A. If this is the first year of a contract, was the opening balance sheet required by contract provision? YES _____ NO _____. If "YES", when was it submitted? _____
- B. Considering the most recent Annual Financial Report (AFR) due within this rating period:
- (1) Give date AFR was due: _____
- (2) Date AFR was submitted: _____
- C. Was AFR audited by an independent licensed or certified public accountant, if required? YES _____ NO _____

*8. FRANCHISE FEE (Item 9 of Instructions)

- A. Are there franchise fees (including building use fees) past due from the concessioner? YES _____ NO _____
- B. For the last 12 months, list due date and date paid for franchise fees: (NOTE: Some concessioners are required to pay more than once a year)
- | | | | | | | |
|-------|-------|-------|-------|-------|-------|-------|
| Due: | _____ | _____ | _____ | _____ | _____ | _____ |
| Paid: | _____ | _____ | _____ | _____ | _____ | _____ |
| Due: | _____ | _____ | _____ | _____ | _____ | _____ |
| Paid: | _____ | _____ | _____ | _____ | _____ | _____ |
- C. If applicable, what is the next date for renegotiation of franchise fees? _____

- D. Are the amount of sales claimed as exempt from franchise fee supported by invoices bearing a certification by the seller that the items meet NPS standards for native American and Indian handicraft items?
YES _____ NO _____

9. **BOND AND LIEN** (Item 10 of Instructions)

- A. Was a bond required by the contract? YES _____ NO _____

B. If yes, give amount and date posted? _____

If a bond was not required, mark item 9 of rating sheet "N/A".

10. **ASSIGNMENT** (Item 13 of Instructions)

- A. If this concession operation has been sold to a successor during this evaluation year, has the successor fulfilled all obligations stipulated by the NPS in (1) letter(s) of contingent and/or final approval, or (2) the assignment, acceptance and approval document? YES _____ NO _____

B. If the name of the business has changed in the past year, give new name: _____

11. **SUBCONCESSION** (Item 14 of Instructions)

- A. Are there any agreements with third parties to provide any services authorized or required in the contract/permit with the concessioner? YES _____ NO _____

B. If the answer is "Yes", what services do they provide? (List)

- C. Are all such arrangements covered by an NPS approved subconcession contract? YES _____ NO _____

If the answer is no, explain: _____

*12. **INSURANCE** (Item 15 of Instructions)

Fill out the attached Insurance Review Checklist first; it will enable you to answer the questions below.

CAUTION: The current NPS insurance requirements are applicable to contracts based on SOR's published after May 1, 1981. Earlier contracts may vary substantially and some questions in the checklist may not apply. Answer those which do apply and attach the checklist anyway because it provides data which WASO needs.

- A. Has concessioner provided the Superintendent with a Certificate of Insurance or Broker's Analysis?
YES _____ NO _____

B. Has the concessioner purchased all the required property coverages in the amount required?
YES _____ NO _____

C. Has the concessioner purchased all the required liability coverages in the amount required?
YES _____ NO _____

D. Has the concessioner had inserted in all insurance policies appropriate clauses as required in the concession contract? YES _____ NO _____

If no, explain: _____

CONCESSIONS

NPS-48

Concessioner Review Program - Contract Compliance

EXHIBIT 1

Chapter 22

Page 5

OTHER REQUIREMENTS (ADD)

INSURANCE REVIEW CHECK LIST

(Date) _____

Park: _____ Concessioner: _____

Contract based on SOR issued after May, 1981? YES _____ NO _____

Insurance Expiration Date: _____

Property: _____ Liability: _____

Concessioner has submitted:

Certificate of Insurance YES _____ NO _____

Broker's Analysis YES _____ NO _____

A. PROPERTY INSURANCE COVERAGE

1. Compare building value as estimated by NPS with Fire and extended coverage insurance (use continuation sheet if necessary).

Building	Value (A)	Insurance Coverage (B)	Coverages on Contents
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

2. Do the coverages in column B equal the values in column A? YES _____ NO _____

3. If blanket coverage is provided what is the amount? \$ _____
Does that amount equal the highest building value in column A? YES _____ NO _____

If no, explain.

4. If the answer to question 2 or 3 is no:

- a. Has the Regional Director made a formal determination that the building(s) affected will not be replaced if destroyed? YES _____ NO _____ N/A _____

If yes, where is the decision documented?

- b. If NPS has not made such a "no replacement" determination, was one of the following lesser coverages approved?

Type Coverage	Approved by	
Surplus line	Superintendent	☐
Deductible	Reg. Dir. up to 5%	☐
	Dir. over 5%	☐
Self Assumption	Reg. Dir. up to 5%	☐
	Dir. over 5%	☐
Actual cash value	Dir.	☐
No insurance	Dir.	☐

5. When were building values last adjusted for inflation? _____

6. Special Coverages

Coverages	Required Yes/No	If Required, amount coverage
Contents (if not in above)	☐ ☐	\$ _____
Builders Risk	☐ ☐	\$ _____
Boiler and Machinery	☐ ☐	\$ _____
Sprinkler leakage	☐ ☐	\$ _____
Other (specify)	☐ ☐	\$ _____

7. Does insurance policy(s) contain the following clauses?

	Yes	No	N/A
U.S. Government a named insured	☐	☐	☐
Same site property replacement clause waived	☐	☐	☐
Loss payable clause for Government owned buildings	☐	☐	☐

B. LIABILITY INSURANCE COVERAGE

1. Types and amounts of coverage

Type Coverage	Amount of Coverage		
	Bodily injury per Person	Occurrence	Property Damage
Comprehensive General Liability	\$ _____	\$ _____	\$ _____
Does it include:			
Product	Yes _____ No _____	N/A _____	
Contractual	Yes _____ No _____	N/A _____	
Liquor	Yes _____ No _____	N/A _____	
Protection & Indemnity/Watercraft	\$ _____	\$ _____	\$ _____
Comprehensive Auto Liability	\$ _____	\$ _____	\$ _____
Workers Compensation			
Statutory	Yes _____ No _____		
Private	Yes _____ No _____		

In addition to the above, does the concessioner have an umbrella liability policy? Amount \$ _____

2. Does policy(s) specify the insurance company shall have no right of subrogation against the United States of America. YES _____ NO _____

INSURANCE PROGRAM

A. LAW, REGULATION AND POLICY

1. Law

None.

2. Regulation

None.

3. Policy

Management Policies Manual, Chapter VIII
Insurance

The National Park Service shall regulate certain types of concessioner insurance coverages in order to (1) provide park visitors and the NPS reasonable assurance that the concessioner has the financial ability to pay bona fide claims for bodily injury, death, or property damage arising from an act or omission of the concessioner, (2) protect the Government against potential liability for claims based on the negligence of its concessioners, and (3) enable rapid repair or replacement of an essential visitor facility which is damaged or destroyed by fire or other hazard.

B. INTRODUCTION

The purpose of this section is to provide guidance to Superintendents and others in meeting the objectives set forth above.

The insurance policies, limits of coverage, and procedures that follow are those required to meet the needs of the Government and the visitor and, therefore, represent minimums under the concession contract. Nothing herein should be construed as listing or describing all the policies which may be necessary to protect the concessioner's interests against other perils which the concessioner may encounter. The National Park Service will not be responsible for any omissions of coverage or any other inadequacies, including inadequate property damage coverage, that may develop as a result of activities authorized under the contract.

The need for concessioners to consult with their insurance agent or other insurance authority cannot be over emphasized. In this regard the concessioner

is to be provided a copy of this chapter and encouraged to provide his/her insurance agent with same as well as a copy of his/her concession contract.

1. Advice and Assistance

Insurance is a complex and constantly changing field. It is not possible or desirable for this chapter to make an insurance expert of every NPS employee who deals with concessions. It is possible, however, to set forth a systematic procedure which will let employees review a program prepared by insurance experts and determine, in most cases, whether the program provides adequately for the visitor and the Government. For those cases which do go beyond the ordinary and require higher levels of expertise, assistance may be obtained from WASO's Concessions Division. For extreme and complex situations, WASO may engage the services of an insurance consultant. Assistance in determining the replacement value of buildings can be obtained through the Concessions Branch at the Denver Service Center.

2. Training

Training in insurance procedures will be provided for those individuals who require such knowledge. Until a pool of expertise is developed, training sessions will be scheduled and conducted under WASO supervision.

3. How To Use This Chapter

To determine specific types of coverages, refer to Coverages Applicable that was initially attached as an addendum to the Concessions Manual and further discussed in Paragraph E.3. Coverages Applicable provides a separate chapter that includes a listing of coverages for many types of businesses. This will assist in determining what coverages are necessary for a particular type of operation.

A very useful publication which is not included with this Guideline is Insurance and Risk Management (Small Business Management Series No. 30, Small Business Administration, 2nd Edition, 1970) by Mark R. Greene. This booklet can be obtained from any SBA office or by writing the Superintendent of Documents (Stock No. 045-000-00037-1/Catalog SBA 1-12:30/2). It is especially recommended for concessioners.

The following Exhibits will assist in understanding and monitoring the insurance program:

- a. GLOSSARY (EXHIBIT 1)
- b. ESTIMATED BUILDING REPLACEMENT COST (EXHIBIT 2)
- c. VISITOR'S ACKNOWLEDGEMENT OF RISK (EXHIBIT 3)

- d. CERTIFICATE OF INSURANCE (EXHIBIT 4)
- e. INSURANCE REVIEW CHECKLIST (EXHIBIT 5)
- f. CONTRACT LANGUAGE (See EXHIBIT 2 to Chapter 6 of this Guideline)

C. PROPERTY INSURANCE

1. Objective

To provide a means for concessioners to fulfill their contractual obligation to repair and/or replace structures within the park which are required for park visitors.

2. Insurable Interest

Concessioners' contractual obligations establish an insurable interest which is required in order for an insurance company to be willing to issue a policy insuring such property to the concessioner. This insurable interest on the part of the concessioner is further emphasized in the following insurance authorities' analyses:

Liability of a party for loss of property which he does not own appears to be sufficient "interest" to be insured under the standard fire policy without explanation or endorsement. This liability may be an agreement to be responsible for damage to property or an agreement to keep it insured for the benefit of another. ¹

Generally speaking, a person has an insurable interest in property whenever he would profit or gain some advantage by its continued existence and suffer some loss or disadvantage by its destruction. ²

3. Required Coverages

The concession contract requires that "The concessioner at its cost shall secure and maintain, for both concessioner improvements and assigned

¹ McMackin, Bernard P. Jr., Editor, Fire, Casualty and Surety Bulletins, Fire and Marine Section, (Cincinnati: The National Underwriter Company, March 1950), P. Fire C-2.

² Gwertzman, Max J., The Standard Fire Insurance Policy New York: Roberts Publishing Corp., "The Insurance Advocate," 1963), P.5.

repair or replace those buildings, structures, equipment, furnishings, improvements and betterments, and merchandise necessary to satisfactorily discharge the concessioner's obligations under this contract." To satisfy this contractual requirement, the concessioner will normally need to purchase one or more of the insurance coverages stated below. In some situations, however, the coverages listed may not be appropriate or economically feasible. Exceptions to the required coverages are discussed in subparagraph 4, and methods for providing less than full coverage are discussed in subparagraph 5.

a. FULL REPLACEMENT VALUE

Such coverage pays the cost to restore or replace the damaged or destroyed property without deduction for actual physical depreciation. This coverage or the equivalent in another form is the desired level of protection.

b. BLANKET COVERAGE

This is a form of coverage that can usually be purchased at a lower premium cost, but provides basically the same protection as Full Replacement Value insurance.

Under blanket coverage a single limit of insurance covers more than one subject of insurance, meaning it may cover several buildings, contents in addition to buildings, or combinations of these. In order to determine premium costs a statement of value of each structure is required. The usual coinsurance clause (See Exhibit 1, Glossary) is 90 percent.

Following are examples for applying blanket coverage:

(1) **Example 1**

<u>Buildings</u>	<u>Limits</u>
#1	\$ 1,000,000
#2	600,000
#3	300,000
#4	<u>100,000</u>
Total Value	\$ 2,000,000
90% Insurance	\$ 1,800,000

In the above example, a limit of \$1,800,000 is applicable to each building. This would be more than sufficient to cover a loss at any one location.

If building #1 were to be totally destroyed, and if it had been insured under a normal specific, not blanket, 90% coinsurance basis, \$900,000 would be the maximum collectible; under a blanket policy up to \$1,800,000 could be recovered.

(2) **Example 2**

Blanket coverage can also be written for an amount which is less than the total property value but at least equal to the highest probable single incident loss. For example, if the aggregate value of the property is \$10 million, with \$2 million at any one location, \$2,000,000 of insurance "per occurrence" would be acceptable coverage.

Caution should be exercised when this method is used at locations where buildings are clustered and it is reasonable that more than one building could be damaged or destroyed to assure that per occurrence amount is enough to cover the building value aggregate.

c. OTHER PROPERTY COVERAGES

In addition to the fire and extended coverage, other coverages may be applicable. These may include boiler and machinery, sprinkler leakage, flood or other special purpose insurance. If a concessioner has a building program, then a builder's risk form policy is to be required at the time construction commences. Application of these and other coverages may be found in Coverages Applicable (see Evaluation Procedures, Paragraph E.3.) and if provided, should be included in the Broker's Analysis (See Required Documentation, Paragraph E.2.). Other coverages may be obtained such as earthquake, business interruption and consequential loss that would be advantageous to concessioners to purchase but which are not a requirement.

The plans and specifications for repair or reconstruction of a structure are subject to approval of the National Park Service. (See Chapter 17 for specific information.)

4. Exceptions

In some situations, as enumerated below, it may not be appropriate to require a concessioner to purchase full replacement insurance coverage.

a. HISTORIC STRUCTURES

Many of the structures used by concessioners are not only historic but are also highly complex buildings which would be prohibitive in

cost to reproduce should they be destroyed. If obtainable at all, insurance premiums would be well beyond any amount which could be reasonably expected of the concessioner. Generally, an attempt to reconstruct the original structure would be contrary to existing NPS policy. For insurance purposes, NPS policy will be to require insurance in an amount sufficient to provide a standard modern building, which can accommodate the functions and capacity of the original but which does not necessarily imitate the original.

At the time the Estimated Building Replacement Cost form (See Exhibit 2) is prepared, the Superintendent should make the determination of whether the Historic Structures provision applies, and so indicate on the estimating form. Election to use this procedure in the concessioner contract will not bar NPS from deciding after a loss or partial loss that the original architectural fabric should be repaired or reconstructed, but it does mean that the additional cost would have to come from NPS funds.

If the existing building is located within a historic district, the design of the replacement will be subject to the NPS standards and guidelines for a structure architecturally compatible with the district. This may also require additional NPS funds.

b. JOINT USE BUILDINGS

If the concessioner occupies only a portion of a building the remainder of which is occupied by NPS, the normal rule will be that the concessioner is not obliged to obtain property insurance. It would not be fair to require the concessioner to insure the entire structure, and most insurance companies are unwilling to cover only a portion of a building. It is recognized, however, that there are a variety of joint occupancy situations in the Park Service and that the above "normal" rule may not always apply. The Regional Director, therefore, is authorized to require property insurance in such form and amount as he/she deems appropriate. Before doing so, it would be prudent to assure that there is, in fact, an insurance company willing to write the desired coverage at a reasonable price.

c. REPLACEMENT NOT REQUIRED

If through the planning process it is determined that a building will be eliminated in the future, or if a building is so minor as not to be needed in the concession operation, insurance will not be required. The Regional Director is the approving authority. The file is to be fully documented, citing proposed or approved planning documents or equivalent justification.

A decision that replacement is not required is not the same as a "no insurance" decision, which is discussed in subparagraph 5a(5), below.

5. Less Than Full Coverage

a. ALTERNATIVE PLANS

As stated above, concessioners are required to purchase at least fire and extended coverage insurance on a full replacement basis. In some cases, however, such coverage is not available from regular insurance companies or is prohibitive in cost. In such cases, certain alternative arrangements may be approved. These, in preferred sequence, are:

(1) **Surplus Line**

Due to the obsolescence of structures, the high risk of various activities or other circumstances, concessioners may not be able to obtain insurance for the aforementioned required coverage from regular insurance underwriters. In such situations the concessioner is to consult with speciality insurance companies, normally referred to as excess and surplus line companies, that provide substandard (high risk) lines of insurance. Generally, state insurance regulations permit the agent or broker to contract with the speciality company only after being denied coverage by a specified number (usually three) of regular insurance underwriters.

(2) **Deductible Plans**

This plan is used to reduce insurance premiums and in some instances is the only method of securing insurance available. Insurance companies use deductibles for the purpose of limiting the frequency of claims or to minimize their exposure to losses due to such situations as limited fire suppression capabilities or possibly the construction and/or deterioration of structures.

When using a deductible, a concessioner assumes part of the loss. For example, a building may be insured at full replacement value of \$100,000 with a 5 percent or \$5,000 deductible. In other words, the concessioner would absorb the first \$5,000 in the event of damage or total loss. The amount of deductible acceptable to the National Park Service is limited to 5 percent of the full replacement value of the building unless a higher percentage is approved as explained in subparagraph b.

(3) **Self Assumption**

In situations where a concessioner has major and costly facilities and a number of lesser valued structures, the concessioner may self-assume the risk of damage to such lesser valued structures without using insurance. Self-assumption is a stronger and more preferable form of protection

than no insurance because the concessioner has a definite funding plan for meeting losses if they occur. Since the net effect is much like a deductible, similar NPS rules apply. The amount of self-assumption allowed is to be expressed as a percentage of the total value of all structures and facilities and is subjected to the same limits as the deductible (5% unless otherwise approved).

Approval of a deductible or self-insurance will require a demonstration from current financial statements that the working capital of the firm is sufficient to cover the self-assumed risk without resort to borrowing.

(4) Actual Cash Value

This is a less desirable insurance valuation based upon the property's replacement cost at the time of loss, less an amount equal to its actual physical deterioration. The concessioner may request approval of Actual Cash Value insurance by submittal of a letter describing the actions he has taken to obtain the preferred coverages. If financial infeasibility is claimed, the letter should include supporting financial information.

(5) No Insurance

If analysis of the foregoing alternatives indicates none are economically feasible, approval may be given to waive the property insurance requirement. However, prior to any waiver, the concessioner is to provide premium quotations from at least three insurance companies and an analysis of the impact of these costs on its economic viability. When insurance is waived, the National Park Service will not be obligated to repair or replace a structure. It must also be realized that no insurance on an essential structure means the Government is assuming the risk. Ability of the Government to execute that responsibility may be dependent on appropriations and is uncertain at best. If it is determined not to require insurance, consideration should be given to discontinuing the use of the structure, elimination of the operation and/or service.

b. APPROVAL AUTHORITY FOR ALTERNATIVE COVERAGES

Concessioners are to attempt to obtain alternative coverages in the order presented above. The concessioner must show proof that the more preferred alternative(s) are not obtainable, or are financially infeasible, prior to requesting the Service's concurrence for a lesser degree of coverage.

Authority to approve the use of the alternatives is as follows: The Superintendent may approve the surplus line alternative; the

Regional Director may approve allowing the deductible or self-assumption up to 5 percent of building and facilities value. The Director must approve deductibles over 5 percent, self-assumption over 5 percent, the actual cash value alternative and permitting no insurance on essential buildings when predicated on economic infeasibility.

6. Determining Property Values

The establishment of accurate property values is essential for insurance purposes because this is the basis for determining proper policy limits.

a. Construction cost for replacement of buildings will generally be determined by the Denver Service Center based on current private industry standards. This will require the Superintendent to provide the DSC with an Estimated Building Replacement Cost form (See Exhibit 2) including photographs and sketches, size, type of construction, location, proximity of construction companies capable to rebuild, restore, or repair the structure, heating/air conditioning systems, utility system and other pertinent facts necessary to establish replacement costs. Copy of any available appraisals should be included.

Building profiles should be submitted to DSC early in preparation of the Fact Sheet or prospectus so that final estimates can be used in preparation of the contract. Revision of the cost estimates will normally be annual from DSC, using accepted construction cost indices. Full re-evaluation will be required only after a material change in the structure.

b. Normally, building contents are insured as an extension of the property damage policy, but some categories of furnishings may be excluded. If the excluded items are necessary to the concessioner's business, additional coverages may be required. The amount of such coverage should be determined by the concessioner and approved by the Superintendent. If there are differences of opinion as to values, consultation with an outside pricing authority will be needed. DSC is not prepared to value personal property.

c. The approval value for each structure should be listed in a separate exhibit to the contract. A sample is included in the Standard Contract Language. (See Chapter 6, Exhibit 2, page 33 of this Guideline.) A new exhibit will be substituted after each annual update.

7. Required Clauses

The concessioner's fire and extended insurance policy must name the United States Government as a named insured, waive the "same site property

replacement" requirement, and contain a loss payable clause on policies that cover Government-owned buildings or buildings in which the concessioner has less than a 100 percent possessory interest. These insurance requirements are briefly discussed below.

a. UNITED STATES AS NAMED INSURED

The policy is to name the United States Government and the concessioner as named insured on both Government and concessioner-owned (possessory interest) buildings "as their interest may appear." Even though the Government, technically, has no financial interest in a structure in which the concessioner has 100 percent possessory interest, it is nevertheless the legal owner with an interest in continuity of service and must have those rights of notification which accompany the status of the "named insured." The "as their interest may appear" clause assures that each will only be paid for its financial interest in the structure.

b. WAIVER OF SAME SITE PROPERTY REPLACEMENT

Insurance policies normally require that a structure be replaced at the same site. General Management Plans may require eventually moving a structure or function to another location in the park or such a decision may be made subsequent to a loss. The waiver would provide this flexibility. There is a possibility that some insurance companies will object to waivers. It should be explained to them that decisions for a new site are made by NPS, not the concessioner. If they still object, the concessioner should seek another insurer. The amount of coverage will still be based on replacement cost at the original site, not another location.

c. LOSS PAYABLE CLAUSE

Applies only to Government improvements, including buildings in which the concessioner has a partial possessory interest. This clause requires the insurance company to pay proceeds to the concessioner, not jointly to the government and the concessioner. This arrangement will permit immediate expenditure of insurance funds for replacement of a damaged structure.

"In accordance with Concession Contract No. _____ dated _____, between the United States of America and the _____ (the Concessioner) payment of insurance proceeds resulting from damage or loss of structures insured under this policy are to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

D. LIABILITY INSURANCE

1. Objective

A visitor using concession facilities authorized by the National Park Service has the right to expect that the operator has the financial capability to pay a bona fide claim which results from the concessioner's act or omission. Insurance should be sufficient to cover all potential risks and in an amount that can reasonably be expected to be awarded in the event of serious injury or death.

2. Minimum Amount of Coverage

There is no industry formula which will establish the proper amount of liability coverage for a given business. One million dollars is not enough if a court awards two million for a single accident; one million dollars is too much if there are no accidents and the resulting premiums seriously erode the profitability of the concession. Therefore, as a guideline, the minimum coverage is to be at least \$100,000 bodily injury per person and the amount per occurrence is to be at least \$100,000 times the potential risk plus \$25,000 for property damage. However, if the minimal coverage proves to be insufficient in the event of a judgement against the concessioner as a result of an accident, the National Park Service will not be held responsible for any shortfall. Because of the complexity of insurance and the amounts that are awarded, concessioners are urged to consult their insurance broker or other insurance representative to ascertain the best coverage for their situation.

In using the guideline to determine the potential risk, it will be necessary to analyze the activity, structure or facility. For example, if a structure can house 100 people but because of the structure's configuration, method of construction and fire protection provided it can be reasonably assumed that 25 percent or 25 people are exposed to the risk at any one time, then \$2,500,000 insurance coverage per accident or occurrence would be needed. This coverage would be expressed as \$100,000 bodily injury per person, \$2,500,000 per occurrence and \$25,000 property damage. The required coverage may be provided through an umbrella liability policy as discussed in Paragraph 3.a.(4) below.

The Superintendent is responsible for reviewing coverage to determine adequacy. In doing so, he/she should consult jointly with the concessioner and his insurance agent to attempt to visualize the types and sizes of accident which could occur. Advice may also be obtained from the Concessions Division, WASO. In some cases, the best solution may lie in umbrella coverage, which is discussed below.

3. Types of Coverages

The following is a brief description of coverages which may be required.

a. COMPREHENSIVE GENERAL LIABILITY

Basic coverage that insures against all declared existing liability and future hazards arising out of the concessioner's business operations, buildings and premises. This coverage is required in every case. The following extensions should be included as part of the basic policy or, if not included, as separate policies or with the use of umbrella liability insurance.

(1) Product Liability

Insures against claims arising from bodily injury or property damage caused by consumption of food or beverage or use of any product processed or sold by the concessioner.

(2) Contractual Liability

Protects the concessioner against contractual liabilities he assumes under contracts. Also, protects the NPS for claims arising from activities that the concessioner may contract with others to perform. Further, it protects the concessioner in his contractual agreement to save and hold harmless the United States of America.

(3) Liquor Liability Coverage

Required where liquor is served because the concessioner may become liable for injury or damage caused by an intoxicated person if it can be established that the liquor served by the concessioner caused or contributed to the intoxication of the person.

(4) Umbrella Liability Insurance

This insurance can be written to provide General Liability as well as automobile and employee liability coverage and when purchased under an umbrella policy a savings on premium is generally realized. An umbrella liability policy comes into play when the limits of the primary insurance have been exhausted. In addition, the umbrella provides broader coverage than the above discussed coverages. A \$10,000 deductible usually applies to the broader coverages. Umbrella coverage begins at a specific limit, \$500,00 or more, and requires that a primary policy be in force for the full amount below the umbrella. In other words, to get an umbrella for \$500,000 to

\$1,500,000, there must be a basic policy limit of \$500,000. Umbrella liability insurance should be provided where there is a potential catastrophic loss and is usually appropriate where a large number of people congregate in enclosed areas, like a multi-story lodging facility, restaurant, passenger boat or motor vehicle tour operation.

b. PROTECTION AND INDEMNITY FOR WATERCRAFT LIABILITY INSURANCE

Covers boat owners' liabilities arising out of the ownership of a vessel for loss of life to any person, illness or injury to passengers and crew, damage to cargo while loading, carrying or unloading cargo, damage to piers and docks and removal of wrecks as required by law. This coverage is required when concessioners operate or rent any type of watercraft. The coverage may be provided under the general comprehensive liability policy (generally, however, the coverage is specifically excluded) or by direct purchase of a Protection and Indemnity (P&I) policy. The latter may be less costly due to credit being given for such safety considerations as depth finders and ship-to-shore radio communications which are not considered in setting general liability rates.

c. AUTOMOBILE LIABILITY

Coverage shall include the "comprehensive" automobile liability form insuring owned or hired vehicles and, where appropriate, the uninsured motorist coverage and statutory "No-Fault" coverages as required by the various states of operation. This is required coverage.

d. WORKER'S COMPENSATION

Required coverage includes: Statutory worker's compensation as required in the state(s) of operation, employer's liability coverage and employer's liability in states with monopolistic worker's compensation funds. Broad Form "All States" coverage is required when a concessioner may operate in more than one state.

e. AIRCRAFT COVERAGE

Required if aircraft are used in concessioner operation.

f. OTHER COVERAGES

There are other liability coverages that are available such as crime, innkeepers, hotel safe deposit, medical payments, personal injury, etc., that under certain situations may be desirable but not required, and their purchase is at the discretion of the concessioner.

4. Clauses

a. ADDITIONAL INSURED

The United States need not be named as an additional insured. This represents a change from previous insurance requirements. The governing concept is that the Government is responsible for its own acts or omissions and the concessioner is responsible for its own acts or omissions. In those cases where the Government is named jointly with the concessioner in a lawsuit only because the Government is a party to the contract, the "Hold Harmless" clause in the contract language obliges the concessioner to represent both parties in court.

b. SUBROGATION

All liability policies are to specify that the insurance company shall have no right of subrogation (See Glossary) against the United States of America, except that caused by the sole negligence of the United States or its employees and have no recourse against the Government for payment of any premiums or assessments.

5. Visitor's Acknowledgement of Risk

a. GENERAL

It has been the practice for some concessioners to request and/or require visitors to sign a liability release or insurance disclaimer prior to the visitor participating in a high risk activity. Waivers are most often used for such activities as river running and other boating activities, horseback riding and mountain climbing. Some waivers may, in effect, release the operator of all responsibilities in the event of bodily injury, death or loss of personal property. Some waivers also release the Government from liability. Release of the concessioner or the Government from bona fide liability for their own acts or omissions is contrary to the policy set forth at the beginning of this chapter. The legal effect the release may have on a visitor seeking claims from a concessioner as a result of bodily injury, death or the loss of personal property will vary according to individual state law.

b. OBJECTIVE

It is consistent with National Park Service policy for the concessioner to warn visitors of the dangers inherent in high risk activities and for visitors to assume responsibility for their own negligence. It is not consistent with National Park Service policy to require visitors to waive their

right to hold concessioners or the Government responsible for negligence resulting in bodily injury, death or loss of personal property.

c. IMPLEMENTATION

Effective January 1, 1985, concessioners are not to request or require visitors to sign a liability waiver for high risk activities. They may, however, advise visitors of the risks involved and have them sign a Visitor's Acknowledgement of Risk form (Acknowledgement) similar to Exhibit 3. When used, the following procedures and limitations are to apply:

(1) Concessioners who want to use a Visitor's Acknowledgement of Risk form are to provide the Superintendent with a proposed acknowledgement form for approval.

(2) The Regional Solicitor is to review the acknowledgement to assure that the above objectives are met and that the acknowledgement is compatible with state insurance laws and regulations.

E. SUPERVISION OF THE PROGRAM

1. Insurance Inspections

It is highly recommended that concessioners specifically request their insurance companies to periodically inspect existing facilities they operate to assure that proper safety standards are adhered to. It is advisable that these inspections be conducted at least once every year. When inspections are conducted, a copy of the report is to be provided the Superintendent by the concessioner.

When new construction or concession-utilized facilities are being substantially renovated by the concessioner, design drawings are to be sent to the respective State Insurance Services Offices or Fire Rating Bureau to obtain their safety and fire prevention recommendations. This service is offered free. Subsequent to the state inspection, the concessioner is to submit his plans along with the inspector's comments to the NPS review authority. (See Chapter 17.)

The insurance inspections (both the insurer and state inspector's) can, if recommendations are followed, provide the highest possible protection to park visitors and possibly result in lower premium costs to the concessioner.

2. Required Documentation

To properly administer the insurance program, it will be necessary for concessioners to have their insurance representative provide the Superintendent, at the time the insurance is purchased, a copy of their Certificate of Insurance (see Exhibit 4) and their Broker's Analysis. With these two documents and the Insurance Review Checklist, the task of reviewing most insurance coverage will be relatively simple.

a. CERTIFICATE OF INSURANCE

The Certificate is issued by the insurance company and broadly states the coverages provided. Fire insurance coverages are to be stated in the "other" portion of the Certificate. The NPS is to be advised of any change in coverage as provided in the concession contract and on the Certificate.

b. BROKER'S ANALYSIS

This document augments the Certificate of Insurance and provides layman's language explanation of coverages and exclusions to basic insurance policies. The analysis should identify the amount and type of coverage on specific structures, summarize any endorsements to liability or property policies and summarize any separate policies. It shall provide affirmative answers reflecting the Service's requirements, i.e., waiver of replacement at "same site". The Analysis simplifies the monitoring process and precludes the need for concessioners to provide a copy of their insurance policy(s), as well as precluding the need for the park staff to decipher sometimes obscure policy language.

3. Evaluation Procedures

To evaluate a concessioner's overall insurance program, appropriate files should be reviewed, the steps below followed and the information recorded as required in Exhibit 5, Insurance Review Checklist. The Checklist is part of the Superintendent's Annual Concessioner Contract/Permit Compliance Report. (See Chapter 22.)

a. STEP 1

Review the insurance documents (Certificate of Insurance and Broker's Analysis) to determine fire insurance coverage and verify that liability coverage is at a minimum of \$100,000 bodily injury per person and \$100,000 times the potential risk per accident, plus \$25,000 for property damage and that higher limits and/or umbrella liability coverage is provided, if required, as described in Paragraph D.3.a.(4). To determine the adequacy of fire insurance, compare estimated replacement cost data prepared by the Denver Service Center, Estimating Branch, with the amount of insurance coverage.

b. STEP 2

Compare the type of coverages with the type of risk described in Coverages Applicable to assure that all reasonably applicable risks are covered. This is done by reviewing the primary category of business (lodging places, eating and drinking places, boats and yachts, etc.) as described in Coverages Applicable.

For each category of business listed in Coverages Applicable there is a section on Package Policy, Building Property Damage, Contents and Personal Property Damage, and Business Operations. To determine the types of coverages required, it will be necessary to review each section for every category of business in which the concessioner is engaged. The best method to review necessary coverages is to first review the principal business category (say lodging) and then eating and drinking places, boats and yachts, retail stores, and etc., if appropriate. For business categories that are not listed in Coverages Applicable, it will be necessary to discuss in detail jointly with the concessioner and his/her insurance agent.

F. SCHEDULING FOR IMPLEMENTATION

1. Objective

It is an NPS objective that these new insurance requirements become applicable to all concessioners at the earliest practical time. The new requirements cannot, however, be arbitrarily imposed on contracts or permits now in existence until such time as they come up for renewal, extension, or other amendment. Policy concerning contracts/permits not slated for amendatory action is further discussed in subparagraph 5 below. All Fact Sheets or Prospectuses are to contain the new insurance requirements, developed as follows:

2. Renewals

a. PROPERTY INSURANCE

Building replacement cost should be determined by use of the Cost Estimating Form while the Fact Sheet is in preparation and the values then included in the exhibit to the contract or permit. Values for other types of property insurance (boiler, sprinkler, etc.) may be left blank to be filled in by the applicant as part of his offer.

b. LIABILITY INSURANCE

Review the coverages carried by the present concessioner. If it is adequate, these limits may be used in the Fact Sheet. If not, higher limits desired should be entered.

3. New Authorizations

a. PROPERTY INSURANCE

Replacement cost for existing buildings should be determined while the Fact Sheet or Prospectus is in preparation. Where new construction is contemplated, these values will equal actual construction cost and need not be set until construction is complete.

b. LIABILITY INSURANCE

There may well be no information on which to base liability requirements. In such a case, these amounts may be left blank to be proposed by the applicant and evaluated by NPS.

4. Contract Amendments

In general, any time the provisions of some part of a contract or permit are to be reopened, consideration should be given to simultaneously negotiating the inclusion of all, or perhaps key parts, of these insurance procedures. This approach is particularly valid if the proposed amendment is one which provides some benefit to the concessioner and a countervailing benefit to NPS can be obtained in return. In particular, a concessioner request to be relieved of an insurance obligation which is no longer required (Government as additional insured under liability policies, for example) should not be granted unless the entire insurance portion of the contract is converted to the new language.

5. Existing Contracts/Permits (no amendment pending)

Insurance coverage on existing contracts or permits not scheduled for renewal or amendment should be examined at the time of annual contract compliance review. Coverages and policy limits should be compared to those set forth herein and the differences, if any, listed as a matter of information (not necessarily as a deficiency) on the contract compliance report.

Over the years, a variety of insurance provisions have been included in contracts and permits; in some cases the provisions are contained in the building assignment document rather than the contract/permit itself. Determination of whether current insurance coverage meets contract/permit requirements must in each case depend on the specific contract/permit language. This Guideline will not attempt to deal with each variety because many will require case by case interpretation. The most frequently found insurance provision states, in its entirety, "The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances."

Application of this clause is discussed separately below for property and liability coverages.

a. PROPERTY INSURANCE

(1) If the existing contract or permit requires the concessioner to provide property insurance at full replacement value, the property insurance provisions contained herein are applicable and should be followed.

(2) If the existing contract/permit contains the "prudent operator" clause, there is no uniform set of private industry practices which offer guidance. A private businessman who owns his facilities outright frequently carries Actual Cash Value coverage, although Full Replacement Value is not uncommon and may be required by the financing institution if there is an indebtedness. A businessman who leases facilities (most nearly comparable situation to Government ownership) sometimes pays for insurance himself (See Triple Net Lease in glossary) and sometimes the property owner assumes responsibility. In any case, considerations of location, vulnerability, future plans and financial impact have considerable bearing on the coverage actually selected.

The foregoing observations establish a supportable argument that the "prudent operator" clause means a concessioner should provide at least Actual Cash Value coverage on its Possessory Interest improvements. So far as Government improvements are concerned, the concessioner should be shown the benefits of ensuring continuity of operation through adequate fire and extended coverage but, in the absence of any other applicable contract provisions, not required to do so.

In a case where the concessioner increases property insurance coverage voluntarily and not as a matter of contract compliance, the Superintendent may approve any of the alternative coverages set forth in Alternative Plans, Paragraph C.5.a. Such approval will be valid until the contract/permit next comes due for amendment or renewal, at which time provisions of Paragraphs F.2 or 3 will apply.

b. LIABILITY INSURANCE

If present general liability limits are below the absolute minimum (\$100,000 bodily injury, \$25,000 property damage) set forth in Paragraph D.2, or if workers compensation and automobile coverage are not provided where applicable, the liability coverages are very likely below the standards which should be expected of any "prudent operator". The problem should be thoroughly explored with the concessioner and the insurance agent. If the concessioner does not agree to raise liability limits it is appropriate to seek advice and assistance as set forth in Paragraph B.1. A similar approach should be taken if

limits are at or above minimum but appear inadequate in view of the size of the concession or risk involved.

GLOSSARY

The following terms and definitions are provided to assist in understanding the insurance program. Definitions were taken from a variety of sources, although much reliance was placed on Insurance Words and Their Meanings, published by Rough Notes Company, Inc.

1. Actual Cash Value - The basis of loss settlement in property insurance policies, which takes into consideration such factors as replacement value less depreciation, market value, rental value, the use of the building, the area in which it is located, obsolescence, assessed valuation and any other factor which would have an effect upon the value. A working rule-of-thumb definition, however, is "replacement cost new at the time of loss, less physical depreciation."
2. Additional Insured - A person, other than the named insured, who is protected by the terms of the policy.
3. Agent - One who has the authority to act for another. In insurance language, an agent is the person who sells insurance direct to the policy holder, and by contract and by law is endowed with many of the powers of the company itself.
4. Agreed Amount Clause - A provision in a policy whereby the policy-holder agrees to carry a specified amount of insurance under penalty of being a coinsurer for the deficit. Used in lieu of coinsurance in certain policies.
5. All Risk Policy - A policy which covers loss caused by any peril which is not excluded as contrasted to "Named Peril" policies which protect against certain perils named in the policies.
6. Blanket Insurance - An insurance policy which covers several different properties or exposures under one policy. (Insurance Authority)
7. Bodily Injury and Property Damage Combined - Also called Combined Single Limit (CSL) policy which provides a single limit for any combination of these liabilities arising from one occurrence. A \$300,000 combined policy could pay \$200,000 bodily injury and \$100,000 property damage, \$150,000 each or any combination so long as the total was not over \$300,000.
8. Boiler and Machinery Insurance - Insurance against loss arising from the operation of boilers and machinery. May cover loss suffered by the boilers and machinery itself, or include damage done to other property and business interruption losses.
9. Broad Form "All States" Coverage - A form of Worker's Compensation Insurance that protects the employer if operations are in more than one state and employees are interchanged between states. (Insurance Authority)
10. Broker - A legal representative of the insured who negotiates with underwriters on behalf of the insured. Nevertheless, the Broker receives a commission from the Insurer (Underwriter).

11. Builder's Risk Form - Indemnifies an insured for loss or damage to a building under construction from specified perils. Insurance applies only in course of construction; a permanent policy must be written upon completion at which time the builders' Risk policy is cancelled pro rata. (Roy C. McCormick, Coverages Applicable, the Rough Notes Company, Inc.).

12. Business Interruption - A form of indirect damage coverage under property insurance policies which protects against loss of income. The loss is determined by calculating gross earnings and subtracting noncontinuing expenses. Under some types of policies such as boiler and machinery the coverage is called "Use and Occupancy".

13. Catastrophe - Means a notable disaster; more serious calamity than might ordinarily be understood from the term "casualty". A catastrophe is a final event, usually of a calamitous or disastrous nature; a sudden calamity; a great misfortune. It is synonymous with "disaster". (Black's Law Dictionary)

14. Certificate of Insurance - The certificate of insurance is a notification of coverage issued by the insurance company to the party that requests it. By the terms of certificates, the company is required to give "notice of change" within thirty days if the policy is changed in any way to all parties that are named insured. (An Insurance Authority)

15. Classification - The systematic arranging of properties, persons, or business operations into groups of categories according to certain criteria. The purpose of such classification in insurance are to create bases for establishing statistical experience and determining rates, and to avoid unfair discrimination. The essential concept of fair discrimination is that each risk should bear its fair share of the overall cost of expenses and losses in relationship to its own relevant expenses and hazard.

16. Coinurance Clause - In property insurance, a clause requiring the insured to maintain insurance at least equal to a stipulated percentage of value in order to collect partial losses in full. If the insurance is less than the minimum required, that proportion of the loss will be paid which the amount of insurance carried bears to the amount which should have been carried:

Insurance Carried

Insurance Required X Loss = Payment (Subject to Policy Limit)

Structure Value = \$100,000

Insurance = \$40,000 (80% Coinsurance Clause would require \$80,000

Loss = \$10,000 insurance)

\$40,000

\$80,000 X \$10,000 = \$5,000 (Insurance Proceeds)

In this illustration the insured is covering the property for \$40,000 instead of the required \$80,000 needed to meet the 80% coinsurance requirement. Therefore, in the event of loss the insurance company will pay only half of the loss.

17. Combined Single Limit (CSL) - See Bodily Injury and Property Damage Combined.

18. Comprehensive General Liability Policy - A policy particularly suited to a manufacturer, contractor or large wholesaler or retailer providing broad coverage for claims made against him/her for bodily injury or damage to property of others for which he/she may become liable and which arise out of his/her entire business operation. Automobile liability coverages may be included in this policy.

19. Contractual Liability - Liability as set forth by agreements between people as distinguished from liability imposed by law.

20. Deductible - Some policies are written to pay only after the policyholder has himself suffered an agreed amount of loss. The amount which he/she must lose first is "deducted" from the total of the damage to determine the amount the company must pay and thus becomes the "deductible."

21. Differences in Conditions Insurance - A policy insuring against losses not usually covered by fire and extended coverage policies such as those caused by flood, earthquake, landslide and other unusual accidental occurrences. Applicable mostly to large commercial and industrial organizations. Performs much the same function in property insurance that the Umbrella Liability policy does for liability coverage.

22. Direct Damage - Damage caused by the direct action of a peril as distinguished from damage done contingently, e.g., a fire may destroy an ice machine and do direct damage to it and do indirect damage or contingent damage to the contents of the freezer which spoil as a result of the refrigeration being shut off.

23. Endorsement - A rider attached to and becoming part of a policy for the purpose of amplifying or modifying it. Any such modification can only become effective with the agreement of the insured unless clearly made solely for the benefit of the insured.

24. Extended Coverage Insurance - Protects against loss or damage caused by windstorm, hail, smoke, explosion, riot, civil commotion, vehicles and aircraft. Written in conjunction with a fire policy either as part of the basic contract or by endorsement.

25. Fire - For insurance purposes there must be accompanying flame to make it so qualify. A fire policy is not liable for losses caused by scorches by cigarettes, unless a flame is actually produced at the same time.

26. Fire Legal Liability - Provides for the payment of all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of, including loss of use of structures or portions thereof rented to or occupied by the insured, including fixtures permanently attached thereto,

if such destruction is caused by accident and arises out of fire. Negligence must be proven in order to collect for damages from the insurance coverages. (An Insurance Authority)

27. Fire Insurance - Covers losses from fire and lightning and also the resultant damage caused by smoke and water.

28. Flood Insurance - Insurance against damage done by the rising or overflowing of bodies of water.

Flood Insurance Act of 1968 (National) - An Act establishing a basis for flood insurance as a joint venture between the private insurance industry and the Federal government.

Flood Insurers Association - A voluntary pool of property insurers formed to provide flood insurance for dwellings in specified areas in collaboration with the U.S. Department of Housing and Urban Development (HUD). This joint venture produces a market for flood coverage hitherto almost nonexistent.

29. Hotel Safe Deposit Liability - Pay sums which the insured becomes legally obligated to pay by reason of liability for loss from safe deposit boxes of property deposited by guests. (Roy C. McCormick, Coverages Applicable, The Rough Notes Co., Inc.)

30. Innkeepers Legal Liability - Hotel and motel operators legally liable for the safekeeping of guests property. Extent of the liability is established by various state laws. Policy insures against this liability imposed by law, usually with a limit of \$1,000 for any one guest, and with an appropriate aggregate limit.

31. Insurance Company - A corporation chartered by state laws to operate as an insurer. The charter can authorize the company to undertake all or some of the principal types of insurance viz., life, fire, marine, casualty and surety.

32. Insurance Company Inspections - In most cases, insurance companies require "on-site" fire and safety inspections of structures and operations they insure. The company issues a report specifying deficiencies and recommendations for improvements usually resulting in lower premiums when complied with. (An Insurance Authority)

33. Insurable Interest - A person has an insurable interest in property whenever he would profit or gain some advantage by its continued existence and suffer some loss or disadvantage by its destruction. (Max J. Gwertzman)

34. Insured - The person protected by a policy of insurance and entitled to recover under its terms.

35. Insurer - The insurance company or other organization such as syndicates, pools or associations providing insurer coverage and services.
36. Liability Insurance - Insurance which agrees to indemnify the policyholder for sums he may be legally required to pay as damages to others as the result of negligence, may cover bodily injury to another or damage to property of another.
37. Liquor Liability Policy - Intended for those who sell liquor to the public. Coverage is excluded from General Liability Policies.
38. Loss Payable Clause - A condition in policy whereby the company is directed by the policyholder to pay any loss that may be due to some other person designated in the policy. Usually the payment is made by check or draft payable to the insured and the designated payee or both.
39. Loss Prevention Program - A form of preventive medicine for insurance. Through actual safety and structural maintenance programs, risks can be minimized, thereby reducing premiums.
40. Machinery Breakdown Insurance - Insurance against loss caused by the failure of machinery.
41. Monopolistic State fund - A state-controlled worker's compensation plan prohibiting private insurers competitively writing the coverage.
42. Owners-Contractors Protective Liability - Insures the legal liability of contractors and other persons for the negligent acts of independent contractors engaged by them and also, in some cases, for their own negligent supervision of the work performed.
43. Owner's Protective Liability - Protects operator from loss due to liability arising from operations of subcontractors, re-decorators, etc. (Roy C. McCormick, Coverages Applicable, The Rough Notes Company, Inc.)
44. Personal Injury - An additional coverage in a Liability Policy extending such policy to cover other than bodily injury. This would include such areas as false arrests, libel, slander and invasion of privacy.
45. Product Liability - The liability a merchant or a manufacturer may incur as the result of some defect in the product he has sold or manufactured.
46. Property Insurance - The insurance of real and personal property against physical loss or damage.
47. Protection and Indemnity Coverage - Protection and indemnity insurance covers the shipowner's liabilities arising out of the ownership of the vessel for loss of life to any person, illness or injury to passengers and crew, damage to cargo while loading, carrying or unloading cargo, damage to piers and docks and removal of wreck as required by law.

48. Replacement Cost Insurance - Insurance which pays the cost to restore or replace the damaged or destroyed property without deduction for depreciation.
49. Risk - Defined variously as uncertainty of loss, change of loss, or the variance of actual from expected results. Its existence is the reason people buy insurance.
50. Same Site - Fire insurance policies require that buildings lost due to fire must be replaced at the same location or same site. (An Insurance Authority)
51. Self-Insurance or Self-Assumption - When an entity decides to retain its own risk. The retention may be funded or unfunded, but there is no insurance unless there is transfer or pooling of risk.
52. Statement of Values - When a risk is rated with a blanket rate, that is when a single rate is to cover more than one item or building, the rating bureau requires that the policyholder give the amount of value in each separate risk and usually in the contents of each so that a correct average may be arrived at.
53. Subrogation - Subrogation is to put into another's place. In insurance, subrogation is the party being sued, suing a third party for monetary reparations in the event of loss. For example; The tenant is sued by a client and the court awards the client \$100,000. The tenant then subrogates against the landlord for \$100,000 or portions thereof for his/her alleged negligence. (An Insurance Authority)
54. Substandard or High Risk - Substandard risks are considered higher than average for loss potential. Examples of potential substandard risks are mountaineering and white-water trips. (An Insurance Authority)
55. Surplus Line - (1) A risk or part thereof for which there is no available market. (2) All insurance written by non-admitted insurers.
56. Triple Net Lease - A real estate term meaning that the lessee saves and holds harmless the lessor of any liability and agrees to pay for all repairs and maintenance to the building, insurance premiums, and real estate taxes. (A Realtor)
57. Umbrella Liability Insurance - A form of liability insurance protecting policyholders for claims in excess of the limits of their primary automobile, general liability, and worker's compensation policies and for many claims excluded by their primary policies. Also called Excess Liability Insurance.
58. Underwriter - One who accepts or rejects risks for an insurance company.
59. Worker's Compensation Insurance - All states have laws that provide compensation to a worker if injured while at work for an employer, whether or not the employer has been negligent. Insurance providing such payment is Workers' Compensation Insurance.

ESTIMATED BUILDING REPLACEMENT COST

Date Prepared: _____

Park: _____

Concessioner _____

Possessory Interest: 100% ☐

Less 100% ☐

Historical Structure: Yes ☐

No ☐

Replaced with: Modern ☐

Like Original ☐

Purpose of Structure:

Lodging ☐

Restaurant ☐

General Merchandise ☐

Office ☐

Recreation ☐

Marina ☐

Comfort Station ☐

Shower ☐

Laundry ☐

Others _____

Dimensions:

No. of Floors _____

Height _____ ft.

Width _____ ft.

Length _____ ft.

No. of Buildings _____ ft.

Total _____ ft.

<u>Construction Type</u>	<u>Percent of total Building</u>	<u>Total</u> <u>Square Feet</u>
--------------------------	----------------------------------	------------------------------------

Frame

Cinder Block

Brick

Log

Other (Specify)

Utilities:Size

Water

Sewer

Electric

Heating

Hot Water

Forced Air

Steam

Solar

Air Conditioning

Other (Specify)

Type of Flooring:Total Square Feet

Wood

Marble

Slate

Stone

Quarry Tile

Vinyl Tile

Carpet

Other (Specify)

Type of Ceiling: Total Square Feet

Drywall

Suspended

Other (Specify)

Interior Walls and Partitions:

Drywall

Plaster

Paneling

Other (Specify)

Windows:

Total
Number

Total
Square Feet

Double Hung

Casement

Wooden

Steel

Other (Specify)

Roof:

Square Feet

Shake

Slate

Shingle (Type)

Insurance Program

Other (Specify)

Bathrooms:Number of:

Hand Basins

Toilets

Urinals

Showers

Tub/Showers

Foundation (Comment on):

Slab on Grade

Basement

Specialty Items (Explain):

Security System

Fire Extinguishing Systems

Insulation (Amount and Type)

Inventory of Furnishings

Other _____

Location: Distance from contractors capable of reconstructing

Provide:

Photographs (if possible)

Sketch of Entire Structure

VISITOR'S ACKNOWLEDGEMENT OF RISK
(SAMPLE)

I recognize that there is an element of risk in any adventure, sport or activity associated with the outdoors. I am also fully cognizant of the risks and dangers inherent in (activity(s)). Knowing of the inherent risks, (may include specific risks) dangers and rigors required of said activity(s), I certify that I am and my family, including minor children are fully capable of participating in the said activity(s). Therefore, I assume full responsibility for myself, my family, including minor children for bodily injury, death and loss of personal property and expenses thereof as a result of my negligence or the negligence of my family participating in said activity(s) except to the extent such damage or injury may be due to the negligence of (concessioner). I further understand that (concessioner) reserves the right to refuse any person it judges to be incapable of meeting the rigors and requirements of participating in (activity(s)).

Name of Participants:

Self _____

Spouse _____

Minor Children _____

I have read, understand and accept the terms and conditions stated herein and acknowledge that this agreement shall be effective and binding upon the parties during the entire period of participation in the said activity(s).

Parent/Guardian _____

Customer Signature _____

Date _____

NOTE: Form may be modified to provide for the signature of each individual member of a group.

CERTIFICATE OF INSURANCE
(SAMPLE)

NAME AND ADDRESS OF AGENT Your Insurance Company 1457 Your Street Your City, State 22031		COMPANIES AFFORDING COVERAGES COMPANY LETTER A Mutual Insurance Co. COMPANY LETTER B Fidelity Insurance Co. COMPANY LETTER C General Insurance Co. COMPANY LETTER D COMPANY LETTER E	
NAME AND ADDRESS OF INSURED Green River Concessioner Green River National Park Green River, Utah 22031			

This is to certify that insurance of the various risks shown herein is in effect as of the date shown herein and is in force as of the date shown herein. Notwithstanding any requirement, term or condition of any contract or policy issued to which this certificate may be subject or may pertain, the insurance afforded by the companies named herein is subject to all the terms, conditions and coverages of such contract.

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE	Limits of Liability in Thousands (\$000)		
					Each Occurrence	Aggregate
A	GENERAL LIABILITY	AC-1201-571-19723	5-1-81	BODILY INJURY	\$	\$
	☐ COMPREHENSIVE FORM			PROPERTY DAMAGE	\$	\$
	☐ PREMISES—OPERATIONS					
	☐ EXPLOSION AND COLLAPSE HAZARD					
C	AUTOMOBILE LIABILITY	V-397823-13-81	5-1-81	BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$300	\$500
	☐ COMPREHENSIVE FORM					
	☐ OWNED					
	☐ UNOWNED					
B	EXCESS LIABILITY			FEDERAL INJURY	\$	\$
	☐ UMBRELLA FORM					
	☐ OTHER THAN UMBRELLA FORM					
B	WORKERS' COMPENSATION and EMPLOYERS' LIABILITY	80-W-61-205102	5-1-81	STATUTORY		
B	OTHER Water Craft (P&I)	PI-56990-290	5-1-81	\$300,000		
	C Fire Policy*			Blanket/Replacement	\$1,000,000	

DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES

*United States of America named insured
Restaurant, houseboats at Green River National Park

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER
Superintendent
Green River National Park
Green River, Utah 22031

DATE ISSUED 4-20-80

YOUR Insurance Company
AUTHORIZED REPRESENTATIVE

Insurance Program

CERTIFICATE OF INSURANCE
(SAMPLE)

NAME AND ADDRESS OF AGENT		COMPANIES AFFORDING COVERAGES		
Your Insurance Company 1452 Your Street Your City, State 22031		COMPANY LETTER A Mutual Insurance Company COMPANY LETTER B Fidelity Insurance Co. COMPANY LETTER C General Insurance Co. COMPANY LETTER D COMPANY LETTER E		
NAME AND ADDRESS OF INSURED				
Green River Concessioner Green River National Park Green River, Utah 22031				
This is to certify that policies of insurance listed below have been issued to the insured parties herein and are in force at this date. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the persons designated herein is subject to all the terms, conditions and coverages of such contract.				
COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE	Limits of Liability in Thousands (\$000) EACH OCCURRENCE AGGREGATE
A	☒ GENERAL LIABILITY ☐ COMPREHENSIVE FORM ☐ PREMISES-OPERATIONS ☐ EXPLOSION AND COLLAPSE HAZARD ☐ UNDERGROUND HAZARD ☒ PRODUCTS/COMPLETED OPERATIONS HAZARD ☒ CONTRACTUAL LIABILITY ☐ BROAD FORM PROPERTY DAMAGE ☐ INDEPENDENT CONTRACTORS ☐ PERSONAL INJURY	AC-5897-175-32791	5-1-81	BODILY INJURY \$ 300 \$ 500 PROPERTY DAMAGE \$ 100 \$ 300 BODILY INJURY AND PROPERTY DAMAGE COMBINED \$ \$ PERSONAL INJURY \$
C	☒ AUTOMOBILE LIABILITY ☐ COMPREHENSIVE FORM ☐ OWNED ☐ HIRED ☐ NON-OWNED	V-879323-31-81	5-1-81	BODILY INJURY (EACH PERSON) \$ 300 BODILY INJURY (EACH ACCIDENT) \$ 500 PROPERTY DAMAGE \$ 250 BODILY INJURY AND PROPERTY DAMAGE COMBINED \$
D	☒ EXCESS LIABILITY ☐ UMBRELLA FORM ☐ OTHER THAN UMBRELLA FORM	U-33398-58399-201	5-1-81	BODILY INJURY AND PROPERTY DAMAGE COMBINED \$ 500 \$ 1000
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY			STATUTORY \$ State Funded - excess
A	Liquor OTHER	L-59987-347-88832	5-1-81	\$500,000
C	Fire Policy**	FP-999987022-81	5-1-81	Full Replacement \$1,000,000w/5000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES

*Includes Water craft liability coverage
 *United States of America named insured
 Restaurant and bar, houseboats at Green River National Park

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER
Superintendent Green River National Park Green River, Utah 22031

DATE ISSUED: 4-20-80
\$
YOUR INSURANCE COMPANY AUTHORIZED REPRESENTATIVE

(Also included in Exhibit 1 of Chapter 22.)

INSURANCE REVIEW CHECK LIST

(Date) _____

Park: _____ Concessioner: _____

Contract based on SOR issued after May, 1981? YES _____ NO _____

Insurance Expiration Date: _____

Property: _____ Liability: _____

Concessioner has submitted:

Certificate of Insurance YES _____ NO _____
Broker's Analysis YES _____ NO _____

A. PROPERTY INSURANCE COVERAGE

1. Compare building value as estimated by NPS with Fire and extended coverage insurance (use continuation sheet if necessary).

Building	Value (A)	Insurance Coverage (B)	Coverages on Contents
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

2. Do the coverages in column B equal the values in column A? YES _____ NO _____

3. If blanket coverage is provided what is the amount? \$ _____
Does that amount equal the highest building value in column A? YES _____ NO _____

If no, explain.

4. If the answer to question 2 or 3 is no:

- a. Has the Regional Director made a formal determination that the building(s) affected will not be replaced if destroyed? YES _____ NO _____ N/A _____

If yes, where is the decision documented?

- b. If NPS has not made such a "no replacement" determination, was one of the following lesser coverages approved?

Type Coverage	Approved by	
Surplus line	Superintendent	☐
Deductible	Reg. Dir. up to 5%	☐
	Dir. over 5%	☐
Self Assumption	Reg. Dir. up to 5%	☐
	Dir. over 5%	☐
Actual cash value	Dir.	☐
No insurance	Dir.	☐

Insurance Program

5. When were building values last adjusted for inflation? _____

6. Special Coverages

Coverages	Required Yes/No	If Required, amount coverage
Contents (if not in above)	☐ ☐	\$ _____
Builders Risk	☐ ☐	\$ _____
Boiler and Machinery	☐ ☐	\$ _____
Sprinkler leakage	☐ ☐	\$ _____
Other (specify)	☐ ☐	\$ _____

7. Does insurance policy(s) contain the following clauses?

	Yes	No	N/A
U.S. Government a named insured	☐	☐	☐
Same site property replacement clause waived	☐	☐	☐
Loss payable clause for Government owned buildings	☐	☐	☐

B. LIABILITY INSURANCE COVERAGE

1. Types and amounts of coverage

Type Coverage	Amount of Coverage	
	Bodily injury per Person Occurrence	Property Damage
Comprehensive General Liability	\$ _____	\$ _____
Does it include:		
Product Yes_____ No_____ N/A_____		
Contractual Yes_____ No_____ N/A_____		
Liquor Yes_____ No_____ N/A_____		
Protection & Indemnity/Watercraft	\$ _____	\$ _____
Comprehensive Auto Liability	\$ _____	\$ _____
Workers Compensation		
Statutory Yes_____ No_____		
Private Yes_____ No_____		

In addition to the above, does the concessioner have an umbrella liability policy? Amount \$ _____

2. Does policy(s) specify the insurance company shall have no right of subrogation against the United States of America. YES_____ NO_____

FINANCIAL ADMINISTRATION

A. ANNUAL FINANCIAL REPORTS

1. Law

P.L. 89-249

SEC. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination have access to said records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

2. Regulation

None.

3. Policy

Management Policies Manual, Chapter VIII
Financial Statement

Concessioners whose operations gross \$1 million or more annually shall provide to the National Park Service audited financial statements on which an auditor's opinion has been expressed by an independent certified public accountant.

Concessioners whose operations gross between \$250,000 to \$1 million annually shall provide to the National Park Service financial statements in which a "Review" has been performed by an independent certified public accountant. The auditor's report on the "Review" must accompany the financial statements.

Concessioners whose operations gross less than \$250,000 annually shall submit financial statements which they certify to be complete and correct. No independent accountant's audit, review, or compilation is required.

4. Responsibilities

a. WASO

Perform comprehensive review of financial reports and advise Regions of results for appropriate follow-up with concessioners.

b. REGION

(1) Oversee the receipt of the financial report by the Parks. If the report is past due, oversee that reasonable follow-up is being made until received.

(2) Forward the original financial report to Washington as soon as possible but not later than 30 days after receipt from the Park.

(3) Perform a review based on ability/expertise and need.

c. PARK

(1) At least 30 days before the end of the operating year, provide the concessioner with 5 copies of the appropriate financial report form.

(2) Obtain from each concessioner within the due date specified in the concession contract or permit an original and 3 copies of the completed financial report. The original and 2 copies are to be sent to the Region as soon as possible but no later than 30 days after receipt.

(3) If the financial report is not received when due, reasonable follow-up should be made until the report is received.

(4) Perform a preliminary review of the financial report.

5. Requirements

Each concessioner is required to submit an annual financial report which reflects the results of that operation pursuant to the contract authorization. Concessioners with operations in more than one location in a park but under separate contract authorization as well as those concessioners with operations in more than one park are required to submit separate financial reports. Furthermore, financial reports should reflect only in-park operations and not include income, expenses, assets, liabilities or equity of other non-concession operations or business of a concessioner's organization. This is most important because each separate financial report should accurately reflect only the results of the concession operation under contract authorization to allow for meaningful analysis, comparison and evaluation by the Service. Other requirements relate to the forms submitted and to independent audits.

a. APPROVED FORMS

Concessioners report on one of two NPS forms, both of which have been approved by the Office of Management and Budget through 4/30/85, and which have been given OMB No. 1024-0029. The long form, Form 10-356 (Rev. March 1979), consists of two parts and 11 schedules while the short form, Form 10-356a (Rev. March 1979) is a one-page income statement. Both forms are available in the normal manner from the Brentwood Supply Facility. Concessioners should submit the appropriate forms (a signed original and the three copies) by the due date specified in the concession authorization.

b. FORM AND AUDIT REQUIREMENTS

The form and audit requirements are dependent on the concessioner's gross receipts. The following chart summarizes these requirements:

<u>Annual Gross Receipts</u>	<u>Form Required</u>	<u>Audit Requirement</u>
I. \$1,000,000 and over	10-356	Audit and opinion by Independent CPA
II. \$250,000 to \$1,000,000	10-356	Review by Independent CPA
III. \$100,000 to \$250,000	10-356	No audit or review requirement
IV. less than \$100,000	10-356a	No audit or review requirement

Concessioners in the first category (I) are required to have the Primary Schedules, which are listed in Part I of the Concessioner Annual Financial Report, audited by an independent certified public accountant in accordance with generally accepted auditing standards and procedures promulgated by the American Institute of Certified Public Accountants (AICPA). The auditor's report on the Primary Schedule must accompany the Concessioner Annual Financial Report.

The submittal of an audited financial report on other than Form 10-356 is not acceptable and does not relieve a concessioner of our requirement. Additionally, the independent accountant's report should refer to our Form 10-365 and not to other report formats.

All concessioners submitting Form 10-356 must include explanatory notes on Schedule F regardless of whether or not the report is audited.

Concessioners in category (II) are required to have a independent certified public accountant perform a "Review" of the Primary Schedules listed in Part I of the Concessioner Annual Financial Report in accordance with the auditing standards and procedures promulgated by the AICPA. The auditor's report on his "Review" must accompany the Concessioner Annual Financial Report.

Regardless of the audit threshold requirements, a concessioner in category II and III may be required to submit audited financial statements when it is considered necessary.

c. COMBINED AUDITED FINANCIAL STATEMENTS

Each concession contract requires that concessioners with sales in excess of \$1 million submit annually an audited financial statement reflecting the results of the operations authorized by the contract. Several concessioners have more than one contract and operate in more than one park or location within a park. Those concessioners wishing to submit a combined audited financial statement in lieu of separate audited statements may be granted approval under the following conditions:

(1) Requests for approval must be made by the concessioner to the Office of Inspector General.

(2) Each request must include the reasons and rationale to adequately support the request.

(3) If approval is given, the combined audited statements must be accompanied by individual unaudited statements for each location. These financial statements must include an independent CPA opinion (a) on the reasonableness of the allocated expenses, and (b) that the combining information used to prepare the combined financial statements has been subjected to auditing procedures in accordance with the AICPA's Statement on Auditing Standards Number 29.

(4) The National Park Service may require at any time an individual audited statement if it is determined to be necessary. However, sufficient notice must be given to the concessioner.

(5) Approval may be withdrawn at any time should it be found that the concessioner is misrepresenting or not properly reporting financial data.

d. SEPARATE REPORTING

It would be desirable that a concessioner operate in the parks as a separate business entity or corporation. If not organized as a separate entity, it will be incumbent upon a concessioner with outside operations to

establish and maintain adequate accounts that will permit identification of the concession accounting transactions for park operation. Expenses and revenues must be segregated and strict control be maintained of interdepartmental transfers between the operations inside and outside the park.

Those concessioners having operations outside the park which supplement the park operations should submit their annual financial reports in such a manner that will show separately the accounts pertaining to inside the park and those pertaining to outside the park.

The investment in common property used jointly in concession and non-concession operations should be allocated between such operations according to the extent that it is used by each, or should be included in the investment account of the operation by which it is principally used and the other operation charged a reasonable rental for its use of the common property.

e. ADDITIONAL INFORMATION

The information requested on the financial report should be considered the minimum required. The concessioners should be aware that the Service may request additional information to supplement the financial report, when needed. This may include requests for clarification and breakdown of information already submitted, as well as new information. At times Superintendents may need specialized information that responds to a particular problem in their park or may feel that certain management data is necessary to properly carry out NPS responsibilities. Operational data such as customers per day, occupancy rates, etc., can be extremely helpful.

6. Instructions For Preparation

a. GENERAL INSTRUCTIONS

Instructions for the individual schedules for both the long and short form are on the back of each schedule. Specific questions can be addressed to the Washington Concessions Division (Financial Branch).

7. Review

Concessioner Annual Financial Reports Form 10-356 (Long Form) and Form 10-356A (Short Form) should be given a preliminary review shortly after reception. While the best place for this review to take place is at the park level, Regions may wish to take on this responsibility themselves. Concessioners should be notified in writing of problems found and/or clarification needed. Some corrections may be arranged by telephone, but no changes to the report should be made by NPS officials without concessioner approval. Any changes made should be initialed and a note made or attached as to the reason for the change.

Upon receipt at the park and regional level, the date of reception should be indicated in the box set aside for that purpose in the upper right-hand corner.

The following is a guide for a preliminary review at the park or regional level. While additional reviews may be performed, this is the minimum that should be done.

a. GENERAL

- (1) There should be no obvious addition errors
- (2) All amounts should be properly transferred from schedule to schedule as indicated by the directions on the forms.
- (3) All amounts should be rounded off to the nearest dollar.
- (4) All amounts should be adequately described. No large amounts, relatively speaking, should have an "other" or "miscellaneous" heading. Clarification should be requested if amounts are excessive.
- (5) Only activity from within the parks should be reflected in the report. To ascertain if the income statement contains gross receipts from outside the park, check Schedule B (long form) as the concessioner will usually deduct the applicable amount.
- (6) Franchise fees paid may not always equal the amount indicated on the report. Adjustments from prior years may increase or decrease the amount paid and this should be explained. Also, concessioners reporting on a cash basis may be indicating the fee paid for the prior year to the report year if that fee was paid during the report year. Some or all of the fee may be included on another line in the report.

b. COVER SHEET

- (1) Insure that the concessioner has signed and dated the report.
- (2) Check the report identifying information for completion and accuracy.

c. SCHEDULE A

- (1) The auditor's preparation and opinion will depend on the gross receipts entered on line 1. See subparagraph 5.b.

(2) Gross receipts also determine if the proper form has been used.

(3) Many of these lines may be left blank. Please bear in mind that not all entities pay income taxes. Sole proprietors, partners, and subchapter S corporations pay the taxes on their personal returns. Also some corporations may be applying a loss carried forward from prior years to offset any taxes owed.

d. SCHEDULE B

(1) Compare line 29 to the amount actually paid. Bear in mind subparagraph 7.a.(6) above.

(2) Check contract terms to see if concessioner used proper percentage and flat or building use fees.

(3) Review authorized deductions for reasonableness.

(4) Deductions declared for genuine U.S. Indian and native handcraft should be reviewed further. Vouchers should be retained by the concessioner to support this deduction.

(5) All subconcessioner transactions should be reported on Schedule B. Note that 50% of all commissions or fees received by the concessioner from the subconcessioners should be paid as franchise fees.

e. SCHEDULE C

(1) Long term debt listed on line 29, should have been approved by the Service.

(2) Does the equity invested meet the commitment made by the concessioner in his offer.

(3) A general check can be made to see if the concessioner has enough liquid assets to cover the current liabilities that may be soon due.

f. SCHEDULE D

(1) Only the concessioner's possessory interest assets should be listed on columns A and B.

(2) Totals on Schedule K should match entries on lines 2,3, and 7.

g. SCHEDULE E

(1) Lines 33 through 39 should be positive if there has been an increase in the specific current liabilities and negative if a decrease, (following the same format as the current assets on lines 26 through 32). Some accountants will reverse the signs not understanding that the total on line 40 is derived by subtracting the total of lines 33 through 39 from the total of lines 26 through 32.

(2) A large decrease in line 25 indicates a significant outflow of money. A continuation over a number of years can be a danger sign in the stability of the business.

h. SCHEDULE F

(1) All notes should be read for understanding.

i. SCHEDULE G

(1) All departmental totals on this schedule should be referenced to a unique column on Schedule H. However, minor totals can be combined to create a miscellaneous column on Schedule H. No departmental total should have more than one letter in the "reference" column.

(2) Percentages of each line to the total can be calculated and compared to prior years to see trends and for comparison with other similar concessioners. This product mix can effect profitability in a significant way.

j. SCHEDULE H

(1) Each column on Schedule H should be "carried down" to line 31. Proration of some of the direct expenses, such as utilities, may be necessary by the concessioner to properly distribute the expenses.

(2) Overhead expenses listed in this schedule (or I) should cause a request to be sent to the concessioner to break out the total dollars into separate componets with the appropriate dollar amounts indicated.

k. SCHEDULE I

(1) No direct expenses like utilities, maintenance, etc., should be listed in this schedule.

(2) If a management fee is listed, an approved management agreement should be on file with the Park Service.

(3) See paragraph j.(2) above.

1. SCHEDULE J

(1) No changes should have occurred to the ownership from the prior year without notification and/or approval by the Service.

(2) No other salaries should be paid to the owners other than those listed in this schedule. The total should be placed on line 1. Schedule I.

m. SCHEDULE K

(1) The assets listed should be grouped and totaled according to the categories on Schedule D. These totals should match the entries on lines 2,3, and 7 of Schedule D.

n. FORM 10-356A (Short Form)

(1) Items (1), (3), (4) and (6) in subparagraph 7.a. and items (1) and (2) in subparagraph 7.b. above apply.

(2) The Statement of Income, lines 1 through 26 should be reasonably complete. Because the same information must be provided to the Internal Revenue Service, there should be no justifiable reason why this simple form should not be fully completed.

8. Distribution

Reports should be transmitted to the next higher level as soon as possible after reception. Of course, it may be administratively efficient to wait until a number of reports have been received. In any event, the original should be sent to Washington Concessions Office.

If, during the review of the financial report, questions have come up or unacceptable portions have been found, the reports should still be transmitted to the next level. A copy of the letter to the concessioner should be attached as an explanation of the status.

The eventual distribution of the four copies should be the park, Regional concessions office, Regional Finance Office, and WASO concessions office.

On certain occasions, concessioners will submit their reports directly to WASO. WASO will then initiate the transmittal pattern in reverse with whatever franchise fee information is necessary to properly credit the concessioner's payment.

B. AUDIT GUIDE

1. Law

P.L. 89-249

Sec. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

2. Regulation

None.

3. Policy

None.

4. Responsibilities

Washington Office

5. Procedures

In March 1979, the Department of Interior's Inspector General in cooperation with the National Park Service issued an "Audit Guide for National Park Service Concessioners". The purpose of the guide is to provide assistance and information to those independent auditors who are engaged by concessioners to have their primary annual financial statements audited reviewed or compiled in accordance with generally accepted auditing standards.

In addition to providing background information, the audit guide identifies special requirements relating to concessioners and provides suggested audit procedures for determining the extent and adequacy of concessioner compliance with the requirements. The audit guide has been dropped as a requirement and its use is now optional. A copy of the audit guide is on file in the Washington Concessions Division and in each Regional Concessions Office.

C. SYSTEM OF ACCOUNT CLASSIFICATION GUIDE

1. Law

P.L. 89-249

Sec. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

2. Regulation

None.

3. Policy

Management Policies, Chapter VIII
System Of Account Classification

To insure uniformity in reporting, concessioners shall maintain an accounting system whereby the accounts can be readily identified with the System of Account Classification Guide and the Concessioner Annual Financial Report form.

4. Responsibilities

Washington Office

5. Procedures

A System of Account Classification Guide was established for concessioners operating in areas administered by the National Park Service. The Guide was issued in conjunction with the requirements of the Accounting Records and Reports section of the concession contract and permit. It is intended to assist concessioners in setting up their accounting system and insure uniformity in maintaining their accounting records and reporting on our Concessioner Annual Financial Report form.

Concessioners may use their own system of account numbers and titles, however, we must be assured that they can be readily identified with the account numbers and titles of our Guide and our Concessioner Annual Financial Report form. Concessioners with limited operations do not need to maintain an involved

accounting system but should use sufficient accounts and books of original entry to disclose the financial status of their entire operation and support the amounts required to be shown on our Concessioner Annual Financial Report form.

A copy of the System of Account Classification Guide is on file in the Washington Concessions Division and in each Regional Concessions Office.

D. FRANCHISE FEE

1. Law

P.L. 89-249 dtd October 9, 1965

SEC. 3(d). Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

40 U.S.C., 47 Stat. 412

SEC. 321. Hereafter, except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and there shall not be included in the lease any provision for the alteration, repair or improvement of such buildings or properties as part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts.

P.L. 97-433, January 8, 1983

SEC. 3. There is hereby established in the Treasury of the United States the National Park Visitor Facilities Fund. There should be credited to the Fund an amount equal to all National Park System concession fees, including franchise fees and building use fees paid to or due and owing to the United States after October 1, 1982 for the privilege of pro-

viding visitor accommodations and services in units of the National Park System.

SEC. 8. The authorities contained in this Act shall expire on September 30, 1989. After that date any moneys previously credited to the Fund under this Act which have not been appropriated, or if appropriated, which have not been obligated or expended, shall be transferred to miscellaneous receipts of the Treasury.

2. Regulation

None.

3. Policy

Management Policies Manual, Chapter VIII

a. FRANCHISE FEES

The probable value of a concession contract or permit shall be reflected in an annual franchise fee paid to the National Park Service. For a contract, the fee shall be in the form of a percentage of the concessioner's annual gross receipts with an additional fee for the concessioner's use of Government-owned structures. Permittees shall pay a franchise fee in the form of a flat fee.

The franchise fee rate is determined by applying a minimum percentage rate to each of the various types of concessioner gross receipts to arrive at an overall minimum fee produced by taking a weighted average according to the magnitude of the gross receipts. This minimum fee may be increased or decreased based on financial considerations such as past and expected operating results in comparison with the concessioner gross receipts and investment.

In order to encourage the sale of genuine Indian and native handicrafts, gross receipts derived from the sale of these items will be excluded from the franchise fee computation.

Effective National Park Service cash management requires that franchise fees be recovered monthly over the year and that interest charges be assessed on late payments.

Waivers of franchise fees are discouraged by the Service but may be granted by the Regional Director when exceptional cir-

cumstances beyond the concessioner's control warrant relief.

b. FEES CHARGED FOR GOVERNMENT FACILITIES ASSIGNED TO CONCESSIONERS

All buildings, structures, or facilities assigned for concessioner use shall provide for a fair value return, which value will be determined in accordance with acceptable practices in the industry for the determination of a fair annual value. Adjustments may be made to the appraised value taking into consideration all of the judgmental factors regarding reasonable profit as stated in Public Law 89-249.

4. Procedures

Concessioners pay a franchise fee to the National Park Service for the privilege of operating which, according to Public Law 89-249, "shall be determined upon consideration of the probable value to the concessioner of the privileges granted by" the authorization. This value is "the opportunity for net profit in relation to both gross receipts and capital invested." Franchise fees are secondary to both preservation of the resources and service to the visitor.

a. FORMAT AND ESTABLISHMENT OF FEES

According to standard contract language, the franchise fee requirement for a concessioner operating pursuant to a concession contract shall consist of two parts. One is a fee based on a percentage of gross receipts and the other is a fee for the use of Government-owned structures. In the case of a permit, the two fees should be combined into an annual fixed fee amount.

(1) Percentage Fee

The percentage fee represents the concessioner's opportunity for net profit and is expressed as a percentage of the concessioner's gross receipts, as defined in the concession contract. The percentage fee to be used in the contract is determined by a weighted average of gross receipt categories and a further adjustment where warranted according to the economic and financial circumstances in which the concessioner operates.

Concessioner gross receipts categories from Schedule G of the annual financial report have been assigned minimum percentages based on profitability and combined into groups with like percentage fees as follows:

Food, lodging, and saddle horse. 3/4 of 1%

Grocery or general stores, alcoholic
beverages, vending machines, sales,

newsstands, snack bars, soda fountains,
camps and other type service operations. . 1-1/2%

Gasoline, transportation and photo-
graphic supplies and services. 3%

All souvenir and curio sales, exclusive
of genuine United States Indian and
native handcraft 5%

The more gross receipts that a particular group has, the more "weight" that the percentage assigned to that group will have in determining the weighted average, or as it is also called, the minimum fee.

The weighted average should be calculated by averaging the group totals for the last 5 years and multiplying the average by the applicable percentage. The four products are totaled to produce an weighted average dollar fee which can be converted to the desired percentage by dividing by the average gross receipts for 5 years.

The weighted average, or minimum fee, is then adjusted according to the concessioner's profit history, expectations for the future, comparisons with private industry, and other pertinent financial and economic considerations. While these considerations can result in the fee rising considerably above the weighted average, it is only under the gravest circumstances that a fee should be lowered below the weighted average. Hence, the weighted average is usually referred to as the minimum fee.

In either case, the final fee determination should be supported in the files with the above calculation and the rationale used to adjust the fee.

The gross receipts, against which the percentage fee is applied, is defined in standard contract language. Various exclusions are allowed, the majority of which are receipts from other than regular park visitors. As such, sales to associated companies and employees as well as dividend and interest income are excluded.

One notable exclusion which does fall in the category of sales to visitors are sales of United States Indian and native handcraft. These receipts can be excluded from gross receipts as an incentive to the marketing of these products.

No changes to the definition of gross receipts can be made without WASO written approval.

(2) Building Use Fee

The building use fee is a return to the government for the use of government-owned structures by the concessioner. The fee is based on a fair value return to the government and is to be determined in accordance with acceptable practices as utilized in the industry for determining fair value. Adjustments may be made to the appraised value taking into consideration all of the judgemental factors regarding reasonable profit as stated in Public Law 89-249. The appraisal and support for any adjustments should be placed in the files for future reference and support.

Government-owned structures used by the concessioner should be listed in Exhibit A to the concession contract along with the annual fee charged for each building. This annual fee should reflect the anticipated number of months the concessioner operates and be a simple proration of the annual fair return.

If the concessioner uses no government-owned structures, Exhibit A should still be completed with "none" indicated in both the list of structures and the fee total.

All government-owned structures used by the concessioner which relate to the concession contract and the services provided must be listed on Exhibit A. No agreements outside of the concession contract can be made with the concessioner relating to use of structures pursuant to the services provided under the contract.

(3) Flat Fee

Most permits, being simpler and smaller operations, do not need the detailed franchise fee calculations discussed above. Instead, a single annual fee should be established which replaces both the percentage and building use fees. However, the fee established should take in all the factors discussed in relation to contracts.

b. FRANCHISE FEE EXCLUSIONS

The gross receipts, against which the percentage fee is applied, is defined in the standard contract language. Certain gross receipts may be excluded by concessioners in computing the franchise fee provided they are reported as gross receipts on line 1 of Schedule A (Statement of Income) of the Concessioner Annual Financial Report. The following is a listing of items which may be excluded.

(1) Sale of genuine United States Indian and native handcraft

(2) Intercompany earnings on account of charges to other departments of the operation (such as laundry)

(3) Charges for employees' meals, lodging, and transportation

(4) Cash discounts on purchases

(5) Cash discounts on sales

(6) Returned sales and allowances

(7) Interest on money loaned or in bank accounts

(8) Income for investments

(9) Income from subsidiary companies outside of the area

(10) Sale of property other than that purchased in the regular course of business for the purpose of resale

(11) Sales and excise taxes that are added as separate charges to approved sales price

(12) Gasoline taxes, fishing license fees and postage stamps not to exceed the amount actually due or paid Governmental agencies

(13) Approval surcharges added to the prices of goods and services in order to recover concessioner utility expenses greater than comparable utility expenses.

No other exclusions are permitted and no changes to the definition of gross receipts in the standard contract language can be made without prior written approval of the Director.

c. FRANCHISE FEE RECONSIDERATION

Franchise fee determinations are made at various times before and during the term of the authorization. By law, they must be reconsidered at least every 5 years. The particular constraints and NPS leverage vary according to the reason and time of the consideration.

(1) **Beginning Of An Authorization**

The initial franchise fee determination is made prior to the execution of the authorization and, lacking an amendment, the fee will remain throughout the authorization. This is also the time when the Park

Service has the most leverage in the determination of the final fee amount.

One method is for the NPS concessions official to perform the analysis detailed in subparagraph 4.a.(1) of this section and place the determined amount in the SOR for all readers to see and accept as a given when submitting an offer.

Another method is to set a minimum acceptable fee to the Park Service and further state in the SOR that the offer must indicate what fee the concessioner would be willing to pay. The offer by the successful applicant would become the contractual fee if it was equal to or greater than the minimum set by the Service. If two offers were considered equal after evaluating the primary factors, the higher of the two franchise fee offers would become the amount set in the authorization. If a preferential right for renewal existed, that concessioner would be given the opportunity to meet the higher franchise fee offer.

In any situation where the SOR does not specify a franchise fee, the Service should determine a maximum acceptable franchise fee as well as a minimum. At some point, given comparability of rates, a high franchise fee will begin to adversely affect service to the visitor. Bids over the maximum would be reduced to the maximum.

(2) Reconsiderations

Standard contract language has provisions whereby the franchise fees will be considered at periodic times during the contract. These times should be set so that there is no violation of the 5 year reconsideration requirement but it also provides the Park Service the opportunity to set reconsiderations at other appropriate times. This can be important when a new service is to be provided and there is no historical information as to the profitability. An initial fee determination can be made and then reconsidered after 2 years instead of waiting for five.

The old standard contract language requires that any decision to change a franchise fee during a reconsideration period must be mutually agreed to by both parties. That is, if either party does not agree, no change can be effected in the franchise fee.

Under the new standard contract language if both the Secretary and Concessioner cannot agree to an adjustment in franchise fees, the position of the Concessioner must be reduced to writing and submitted to the Secretary for a determination. If desired by the Concessioner, an advisory arbitration panel will be established for the purpose of recommending to the Secretary appropriate franchise fees. The written determination of the Secretary as to franchise fees shall be final and conclusive.

(3) **Extensions**

Amendments which extend authorizations making them more than 5 years since the last franchise fee reconsideration, are in violation of P.L. 89-249. A reconsideration should be performed prior to completing the amendment. Any changes that are necessary as a result of the franchise fee reconsideration should be included in the extension amendment.

(4) **Concession Requests**

Concessioner will often request a decrease in the franchise fee rate outside the specified reconsideration period as stated in the authorization. This is in effect, a request to change the terms of a contract that were agreed to by both the concessioner and the Park Service. Requests for a decrease in the franchise fee rate at a time other than specified in the authorization can only be agreed to if there is equal consideration or benefit flowing to the Government. In other words, the Government cannot give up something both parties agreed to unless it receives like consideration in return.

d. PAYMENT AND DISPOSITION

Franchise fee due dates are specified in the concession authorization. While fees have been historically due within 60 days after the end of the concessioner's fiscal year, new standard language incorporates both the Departmental and National Park Service cash management policies.

Under these cash management policies, concessioners are required to pay franchise fees on a monthly basis. The payments are due within 15 days after the last day of each month. Any adjustments due the government should be paid at the time the financial statements are due and any overpayments should be offset against the next months franchise fee payment.

An interest charge is to be assessed on all overdue amounts for each 30 day period, or portion thereof, that the franchise fee payment is delayed. This late interest charge is to be assessed on all concessioners regardless of whether they operate pursuant to old or new standard contract language. The percent of interest to be charged should be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

All franchise fees received are to be deposited in the U.S. Treasury's Miscellaneous Receipt Account Symbol 142465 to be credited to the National Park System Visitor Facilities Fund.

For additional information on cash management, see Departmental Manual, Part 338DMI and National Park Service Staff Directive 79-5 (Revised).

e. WAIVERS

The payment of franchise fees is a contractual obligation of the concessioner. Failure to pay the fee is a violation of the contractual agreement and can be cause for termination. Under exceptional circumstances, the Service may waive the fee in whole or in part for a particular year. The authority to waive franchise fees rests with the official who has the responsibility to execute the authorization. Generally, this will be the Regional Director for contracts and the Superintendent for permits. It should be kept in mind, however, that franchise fee waivers are discouraged by the Service and should not be viewed as a "right" of the concessioner.

Once a decision is reached on a concessioner's franchise fee request, it becomes final. This decision may only be reconsidered if substantial new information is provided by the concessioner. Since the authority to waive franchise fees is strictly discretionary with the Secretary, there is no administrative appeal from such decisions.

It is important that the method for handling fee payments be applied consistently throughout the Service. Therefore, all waiver requests should be handled as follows: The concessioner should be required to remit payment of the franchise fee no later than the date required by its concession contract. However, if a concessioner requests permission to delay payment of the fee and can show that by remitting such fee on a timely basis its operation would be seriously jeopardized or an unreasonable hardship will result, an exception should be made whereby the fee payment would be delayed pending a decision on the waiver request.

Any request for a waiver by a concessioner must be in writing and must be received by the Service no later than the last day the final franchise fee payment or adjustment is due. In addition, no requests for waiver shall be submitted by the concessioner prior to the last day of its operating year.

All requests for waiver must include specific and detailed documentation necessary to support the request. Since prudent businesses obtain reasonable insurance such as business interruption insurance, etc., the supporting information should also address insurance.

To be eligible for waiver, the circumstances must be beyond the concessioner's control and be of such a nature that warrant relief for the concessioner. All assertions must be substantiated in detail and the actual dollar amount of losses suffered must be presented. Comparisons with prior years, whether gross receipts, expenses, or visitation figures, are acceptable if presented in a valid and cogent manner.

To be considered beyond the concessioner's control, the circumstances must meet all of the following conditions:

- (1) must be other than a normal business risk.
- (2) must be unanticipated
- (3) must be caused by external influences on the concession operation and its owners and managers.

To warrant consideration for relief, the concessioner must be characterized by all of the following:

- (1) have suffered financial loss in the year in question.
- (2) have depressed financial history
- (3) be in a financial situation where service to the visitor will be significantly affected.

In addition, the circumstances described by the concessioner must have occurred in the concessioner's operating year for which the waiver is being requested. The maximum relief that can be granted is the amount of the franchise fee due for that particular year. No fees from future years may be considered but, on the other hand, relief amounting to less than the total franchise fee can be granted.

Waivers should be restricted to unusual circumstances that are not considered normal to a business. When circumstances occur that reflect long term trends affecting profitability, a reconsideration of the franchise fee should be the appropriate course of action. See subparagraph 5.b. for reconsideration of franchise fees.

Should the situation warrant, the Office of the Inspector General can be requested, through the Washington Office, to audit the books and records of a concessioner requesting a waiver. However, we cannot be assured that such audit request will be given immediate consideration by the Inspector General because of its other planned workload priorities. While an audit report cannot be expected to provide an answer to waive the fee or not, the information provided may aid in the analysis. At a minimum, it should provide assurance as to the reliability of the concessioners figures.

f. DOCUMENTATION

Decision documents should be prepared for all actions taken concerning franchise fees even if no changes occur. This requirement includes both reconsiderations and waivers and should be prepared regardless of who the initiating party is.

This document should be in the form of a memorandum from the Regional Concessions Chief to the appropriate Regional official responsible for making the decision. It should contain a detailed analysis taking in all the

pertinent factors and presenting in a clear, concise manner the weighing of these factors against whatever criteria is applicable in the particular case. Franchise fees may be considered secondary to service for the visitor but franchise fee actions must still be supportable as to the conclusions reached. Special attention should be paid to the assumptions and development of the analysis.

A letter to the concessioner will usually have to be sent to inform the concessioner of the decision or action taken. This letter can be a summary of the decision document but need not go into the detail the other document, by its nature, must have.

These documents should be retained in the originating office for review as well as becoming a part of the official record.

g. VARIANCES

No changes to the franchise fee portion of standard contract language are permitted without WASO approval. This includes the definition of gross receipts as well as the actual payment language.

E. OPENING BALANCE SHEET

1. Law

P.L. 89-249

Sec. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

2. Regulation

None.

3. Policy

Management Policies Manual, Chapter VIII
Opening Balance Sheet

All new concessioners operating pursuant to a contract shall submit a balance sheet to the NPS effective as of the beginning of the first day of operation.

4. Responsibilities

a. WASO

Performs a review of the Opening Balance Sheet and advises the Regions of any discrepancies for follow-up with concessioners.

b. REGIONS

(1) Oversee the receipt of the Opening Balance Sheet by the parks. If it is past due, oversee that reasonable follow-up is made until received.

(2) Forward the original to Washington as soon as possible but not later than 30 days after receipt from the park.

(3) Perform a review based upon ability/expertise and need.

c. PARKS

(1) Provide 4 copies of the Opening Balance Sheet form to the concessioner at the time of the new contract or approval of the sale.

(2) Obtain an original and 2 copies of the completed Opening Balance Sheet within the due date. The original and copy should be sent to the Region as soon as possible but no later than 30 days after receipt.

(3) If the Opening Balance Sheet is not received when due, reasonable follow-up should be made until it is received.

5. Procedures

Concessioners are required to submit an Opening Balance Sheet within 90 days after the execution of a new contract or upon the assignment/sale of a concession. The Opening Balance Sheet must be as of the first day of the new contract or assignment/sale and include a schedule of assets in which a possessory interest is claimed. The Opening Balance Sheet and accompanying schedule are required for the following reasons:

a. It assists NPS in determining the concessioner's financial condition at contract inception or upon the assignment/sale.

b. It enables NPS to verify the financial information contained in a concessioner's offer in response to a prospectus, fact sheet, or purchase agreement.

c. It provides NPS with a detailed listing of those assets in which the concessioners claim a possessory interest and establishes the respec-

tive values for these assets.

The Opening Balance Sheet should be audited by an independent certified public accountant. The form to be used for submitting the Opening Balance Sheet is Schedule C (Balance Sheet) of the Concessioner Annual Financial Report, Form No. 10-356. The accompanying schedule of assets in which a possessory interest is claimed must include the following for each asset.

- a. A brief description of each asset claimed
- b. The date the asset was acquired
- c. The cost of the asset
- d. The estimated useful life of the asset
- e. The depreciation method used
- f. The net book value of the asset
- g. The prior year depreciation

A copy of the Opening Balance Sheet format and schedule of possessory interest assets format which should be used by concessioners is included as Exhibit 1 to this Chapter.

An Opening Balance Sheet will generally not be required from existing concessioners whose contracts are being renewed because these concessioners annually submit a balance sheet as part of their annual financial report submittal. However, if NPS does not have on file a schedule of possessory interest assets claimed, it should be requested at the time of contract renewal.

F. EMERGENCY AND UNSCHEDULED PROJECTS LUMP SUM PROGRAM

The lump sum program comprises four separate categories: (1) roads betterment, (2) major alterations, buildings and utilities, (3) major alterations, historic structures, and (4) concessioner developments.

The concessioner category was established to enable the Service to provide for minor utility services (construction and connections), walks, trails, parking and roadways to serve developments constructed and operated by concessioners, the need which cannot be foreseen and programmed during the normal budget process. Such funding is also intended to provide for emergencies as the needs arise, e.g., storm damage, water erosion, health, safety, etc. The projects under this program must always serve or be adjunctive to concessioner operations. Concession lump sum funding is the most effective method of accomplishing these minor construction projects since emergency and unscheduled

construction needs can be met quickly without a lengthy review and appropriation process delay.

In prior years, each of the four categories were handled separately. However, beginning with FY 1984 a new procedure for programming this total activity was established. Under the new procedure the Regions submit a single priority list for all their lump sum needs. Following the submission of each Region's priority list, the Director will make a determination of the projects to be funded from this activity.

Should emergency needs occur during the course of the year, the Regions will be expected to delete, or reduce in cost, those projects approved for funding in order to fund the new projects.

G. UTILITIES

1. Law

16 U.S.C. 1b-4

Furnishing on a reimbursement of appropriations basis all types of utility services to concessioner's, contractors, permittees, or other users of such services, within the National Park System, Provided, that reimbursement for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

31 USC 483a

OMB Circular A-25, 3.b. Lease or sale. Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

2. Regulations

None

3. Policy

SPECIAL DIRECTIVE 83-2

The National Park Service has recently adopted a new policy

on charging users for NPS-produced utilities. Under the new policy the Service will:

1. Charge rates based on operating costs (not including existing capital investments) or comparability, whichever is greater, to all users except NPS employees. Concessioners will be permitted to pass through costs exceeding comparability.

2. Permit charges to be adjusted (no lower than comparability) where operating costs are extraordinarily high and cannot practically be passed through in total to the visitor through price increases, i.e., allow adjustments to rates where passing through the excess of operating costs over comparability would jeopardize the economic viability of the concessioner.

4. Procedures

Since utility rates are to be based on actual operating costs or comparability whichever is greater, both methods must be completed and kept current. Completion of both methods will be made at the Park level with Regional Office review and approval. Guidance on both methods is available from the Washington Finance Division and Engineering and Safety Services Division (Maintenance).

If it is determined that utility charges are greater utilizing the operating cost method rather than the comparability method, concessioners, one of several groups of users, will be allowed to increase the prices they charge visitors for goods and services. The increase will allow concessioners to recover those utility costs which exceed comparable utility costs by passing such excess costs directly to the actual users -- the visitors. (See Chapter 18, Paragraph, F.1, Procedure For Adjusting Comparable Rates)

In certain extraordinary circumstances, recovering actual operating costs for utility services from concessioners may threaten the economic viability of their operations and frustrate the ability of the Service to carry out its statutory requirements to preserve and protect areas of the National Park System and to provide for their enjoyment by the public. In those few instances, the utility charges may be adjusted but in no event will they be lower than comparability. (See Chapter 18, Paragraph F.2, Utility Charge Exception)

The following guidance is available from the WASO Concessions Division:

a. increasing visitor rates to recover utility charges in excess of comparability;

b. reduction of utility charges below operating costs (but not below comparability).

CONCESSIONS

NPS-48

Financial Administration

EXHIBIT 1

Chapter 24

Page 1

CONCESSIONER:

AS OF:

OPENING BALANCE SHEET

ASSETS**Current Assets**

1. Cash.....
2. Marketable Securities.....
3. Inventories-Merchandise.....
4. Accounts Receivable.....
5. Notes Receivable-Related Party.....
6. Notes Receivable-Other.....
7. Prepaid Expenses.....
8. Other.....
9. TOTAL CURRENT ASSETS.....

Fixed Assets

10. Depreciable Fixed Assets.....
11. Less: Accumulated Depreciation.....
12. Net Depreciable Fixed Assets.....
13. Construction in Progress.....
14. Land.....
15. TOTAL FIXED ASSETS.....

Other Assets (Identify)

16.
17.
18. TOTAL OTHER ASSETS.....
19. TOTAL ASSETS.....

LIABILITIES**Current Liabilities**

20. Notes Payable-Other Party.....
21. Notes Payable-Other.....
22. Accounts Payable.....
23. Current Maturities on Long-Term debt.....
24. Government Franchise Fee Payable.....
25. Accrued Liabilities.....
26. Advance Deposits.....
27. Other.....
28. TOTAL CURRENT LIABILITIES.....

Long-Term Liabilities

29. Long-Term Debt, Less Current Maturities.....
30. Other.....
31. TOTAL LONG-TERM LIABILITIES.....
32. TOTAL LIABILITIES.....

EQUITY

33. Partner's or Proprietor's Capital.....
34.

PREFERRED STOCK
CORP.
ONLY

 Preferred Stock, Par Value \$.....
35.

Authorized:.....
Common Stock, Par Value \$.....
Authorized:.....

 Shares, Issued:..... Shares.....
36. Less: Treasury Stock.....
37. Additional Paid-in Capital.....
38. Retained Earnings.....
39. TOTAL EQUITY.....
40. TOTAL LIABILITIES AND EQUITY.....

DATE _____
AS OF: _____
SCHEDULE OF ASSETS
IN WHICH CONCESSIONER CLAIMS POSSESSORY INTEREST

Description of Asset (A)	Date Initially Acquired or (B)	Depreciation Method (C)	Depreciation Life (D)	Cost (E)	Accumulated Depreciation (F)	Net Book Value (G)

Officer's Name: _____
(Signature)

Title: _____

SPECIFIC COLUMNAR INSTRUCTIONS

Column A. Description -- Using a separate line for each asset, list only those assets in which the concessioner claims possessory interest. Describe each asset in sufficient detail so that upon physical examination thereof, the assets can be readily identified. Include location of asset in description.

Column B. Date Initially Acquired or Constructed -- Give month, day and year when individual assets were acquired or constructed.

Column C. Depreciation Method -- Indicate what method is used to depreciate assets, for example:

1. SL - straight line
2. DB - declining balance

Column D. Depreciation Life -- Indicate the number of years over which assets are being depreciated.

Column E. Cost -- Indicate cost of assets at time of acquisition.

Column F. Accumulated Depreciation -- Indicate amount of accumulated depreciation as of the date form is filed.

Column G. Net Book Value -- Subtract amount in Column F from amount in Column E. Enter result.

FREEDOM OF INFORMATION ACT (FOIA)

A. LAW

5 U.S.C., Section 552

(a)(3) Except with respect to the records made available under paragraphs (2) and (3) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed shall make the records promptly available to any person. . . .

B. REGULATION

43 C.F.R., Subtitle A, Part 2, Subpart B

§2.11 Purpose and scope

(a) This subpart contains the regulations of the Department of the Interior implementing the requirement of subsection (a)(3) of the Freedom of Information Act, 5 U.S.C. Section 552(a)(3),.... and describes the procedures by which records may be obtained from all constituent units of the Department of the Interior. . . .

§2.13. Records available [(a) and (b) omitted as they do not apply]

(c) Statutory exemptions. The Act exempts nine categories of records from this disclosure requirement. The Act provides that disclosure is not required of matters that are: . . .

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;. . .

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;. . . .

C. POLICY

It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

D. PROCEDURES

In keeping with the spirit of the Freedom of Information Act (FOIA), the records maintained within the Concessions Divisions are to be made available to the public to the greatest extent possible. The procedures to be followed upon receiving a written request for records are contained in 43 CFR, Subtitle A, Part 2, Subpart B. These include time limits on processing requests, fees to be charged, denial of records and the public right of appeal.

As a result of the court's opinion in National Parks and Conservation Association vs. Morton, Civ No. 436-72 (D.D.C.) the following financial information must be provided when requested pursuant to an FOIA request.

1. The franchise fee amount (except for the supporting details used in computing the amount.)
2. The prepaid expense amount (previously included on Schedule M of the old annual financial report form).
3. The annual report of statistical information (except occupancy percentages) previously included on attachment 10-356(b) of the old annual financial report form.)

On the issue of competitive harm, the Court ruled that NPS concessioners face meaningful competition and that their competitive position would be likely to be harmed substantially by the disclosure of financial information sought.

On the issue of financial information that has been previously disclosed, the Court ruled that to the extent the Service determines that exactly the same financial information has been filed with the Service that is publicly available in the records of another agency, i.e., Securities and Exchange Commission and Internal Revenue Service, the Service must provide the financial information when requested pursuant to an FOIA request.

As a result of the Court's opinion, the Service must continue to handle FOIA requests for concessioner financial information on a case-by-case basis. Each request must be analyzed on its own merits with respect to the particular information sought. For each request, the affected concessioner should be contacted to solicit his/her impact on whether the requested information is publicly available elsewhere or previously made available by the concessioner, and whether its disclosure would be likely to cause substantial competitive harm. The concessioner should be requested in detail to articulate the precise bases for the alleged harm. This information must be carefully analyzed, since the decision to withhold and the rationale for withholding is a Service decision, not a concessioner decision. Accordingly, the Service must examine the requested information and segregate for disclosure information that has been made public elsewhere or information that is of a noncompetitive nature. The

office handling the FOIA requests should work closely with the Solicitor's Office and also keep the Freedom of Information Officer informed.

A sample letter to a concessioner and a sample letter to a requestor for financial information pursuant to an FOIA are included in this chapter as Exhibits 1 and 2 respectively. Also, included as Exhibits 3, 4 and 5 is guidance received in prior memorandums from the Solicitor's office.



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

SAMPLE LETTER TO CONCESSIONER

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Mr. Concessioner
Vice President
XYZ Corporation
80 Main Street
Washington, D.C. 20240

Dear Concessioner:

We have received a request from John Q. Public under the Freedom of Information Act for the most recently reported sales volume (total, food and beverage, lodging, souvenir and gifts, and other) of your concession operation at xxx National Park. This financial information is contained in the 1982 annual financial report submitted to the National Park Service by your company.

In order to determine whether this office is required by the Freedom of Information Act (FOIA), 5 U.S.C. §552 (1979), to release this information, we would appreciate receiving your comments on the following points. Your comments must be received in this office before September 1, 19___. Failure to respond before this date will result in the release of the requested information. If you do not object to the public disclosure of this information, please advise us promptly so that we can arrange for its release.

The Freedom of Information Act contains two exemptions from the disclosure requirement which may be applicable to the financial information requested. Exemption four relates to trade secrets and commercial or financial information obtained from a person and privileged or confidential, 5 U.S.C. §552(b)(4) (1976).

In order for the Service to deny the information sought on the basis that it is confidential within the meaning of exemption four, we must determine that you actually face competition and that substantial competitive harm would be likely to result from disclosure of the information. The failure to demonstrate either point will require disclosure. If you wish the National Park Service to invoke exemption four, we request that you provide us with the following information so that we can make the necessary determinations.

As to whether you face competition, please identify those facilities operated by you under the National Park Service concession authorization, their location, their proximity to the park area, and the goods and services offered by you at these facilities. For each facility so identified, please provide the names and locations of those businesses which you consider to be competitors. Identify the proximity of the competitors to your business and the park area, and the nature and comparability of the goods and services offered by them. To the extent that such information is available to you, you may also wish to advise us as to your competitors' prices, marketing practices, personnel experience and qualifications, and expansion plans. Any other information which you feel is relevant to this question will also be appreciated.

As to the issue of substantial competitive harm, you may submit a statement about any adverse effects on your competitive position that you reasonably believe would be likely to result from the disclosure of your sales volume. In framing a response, you may wish to consider such factors as price competition, the length of operating seasons, contracting with your suppliers, the ability to secure credit, collective bargaining, expansion plans, marketing practices, and capital improvements, or any other factors deemed relevant.

Exemption six of the FOIA relates to personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, 5 U.S.C. §552(b)(6) (1976).

In National Parks and Conservation Association vs. Kleppe, 547 F. 2d 673 (D.S. Cir. 1976), the court of appeals indicated that nondisclosure may be warranted in the case of small or individually owned concessions where the financial information sought is of a highly personalized and private nature. If you wish the Service to invoke exemption six, we must determine whether your sales volume records are exempt from disclosure on personal privacy grounds. Frankly, given the kind of information requested, we are doubtful that it can be considered as private in nature. Furthermore, the court defined "personalized" to apply to those concessioners where ownership is so limited that a business' finances can be attributed divisibly or accurately to individual stockholders or partners. To aid us in making our determination, please advise us whether you believe your sales volume records contain information of a highly personalized and private nature, and, if so, please identify that information and advise us how or to what extent the disclosure of such information would constitute an invasion of personal privacy. Any statement in this regard must contain a description of the structural organization of your business and identify the individual stockholders or partners whose privacy would be invaded by disclosure.

You should be aware that, even if you demonstrate that your financial records are personal in nature, they would not then automatically qualify for nondisclosure. As the Supreme Court has said in Department of Air

Force vs. Rose, 48 L. Ed. 2d 11, 33 (April 21, 1976), the sixth exemption does not protect against disclosures which would constitute incidental invasions of privacy. The application of exemption six requires a balancing of the individual's privacy against the public's right to government information.

We also need to know if your sales volume has been made public or is otherwise available to the public as a result of filings with other Federal agencies, State regulatory authorities or with any other entity or organization. Any sales volume data which has been made public must be released.

We would appreciate receiving your statement in the form of a letter. If the need arises, however, you should be prepared to offer the same information in an affidavit or testimonial form. We wish to advise you that, unless you provide the National Park Service with sufficient detail to support the conclusion that the requested information falls within one of the exemptions to the FOIA, we will be required to release it. If you have any questions regarding this letter, please do not hesitate to call _____ at _____. Thank you for your cooperation.

Sincerely,

Director



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

SAMPLE LETTER TO REQUESTOR

Mr. John Q. Public
Attorney at Law
100 South Avenue
New York, New York 10030

Dear Mr. Public:

This is in reply to your November 13, Freedom of Information Act request for the most recently reported sales volume (total, food and beverage, lodging, souvenir and gifts, and other) for the XYZ Corporation. We must respectfully deny your request. Our releasing of the information you requested would likely cause substantial competitive harm to the XYZ Corporation in its day-to-day business operations. In addition, we have determined that the specific data you requested, represents information which is not customarily exchanged among competitors within the industry.

Our denial is based upon exemption (4) of the Federal Freedom of Information Act (5 USC 552(b)(4) (1970)). In our judgment this exemption is applicable to the material you seek. The exemption permits the nondisclosure of confidential commercial or financial information which would customarily not be released to the public from the person from whom it was obtained.

You may appeal our decision not to disclose this financial information by writing, pursuant to 43 C.F.R. §2.17 to the Freedom of Information Act officer at the address cited below:

Freedom of Information Act Officer
Office of the Assistant Secretary
Policy, Budget and Administration
United States Department of the Interior
Washington, D.C. 20240

Your appeal must be received within 20 days (Saturdays, Sundays, and public holidays excepted) after the receipt of this letter. Your appeal must be accompanied by copies of your original request and this denial. It should be marked, both on the envelope and on the face of the appeal, with the legend "FREEDOM OF INFORMATION APPEAL." In order to expedite the appellate process and to ensure full consideration of your appeal, your letter should

contain a brief statement of the reasons why you believe this initial decision to be in error.

The persons responsible for this determination are _____
and the undersigned.

Sincerely,

Director

cc: Freedom of Information Act Officer, Asst. Secy, PBA



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

DEC 3 1976

Memorandum

To: Director, National Park Service

From: Attorney-Adviser, Conservation and Wildlife

Subject: National Parks and Conservation Association v. Kleppe, et al., No. 76-1044 (D.C. Cir. November 15, 1976) [National Parks II].

The court of appeals has affirmed the district court's decision that the disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (1970), of National Park Service concessioners' financial reports (i.e., those portions of the reports not previously required to be disclosed) would be likely to cause substantial competitive harm with respect to five of the seven concessioners 1/ involved in the subject case. Accordingly, their reports are held to be confidential within the meaning of exemption four and are not required to be disclosed under the FOIA. The appellate court reversed Judge Gasch's decision permitting nondisclosure of the financial records pertaining to National Park Concessions, Inc. and Buzzard Point Boatyard Corp. because there was insufficient evidence in the record to support his finding that they face meaningful competition. The court has remanded the case as to these two concessioners for a determination whether they face meaningful competition or, alternatively, whether the sixth exemption to the FOIA permits nondisclosure of their financial records on personal privacy grounds. A copy of the court's decision is enclosed for your reference.

The issue in this case is whether the financial information sought by plaintiff-appellant is confidential within the meaning of the fourth exemption to the FOIA, 5 U.S.C.

§ 552(b)(4) (1970). When this matter was before the court of appeals previously, the court promulgated a test for determining confidentiality which we interpreted to be: (1) whether the information requested would customarily be disclosed to the public by the person from whom it was obtained, and (2) whether disclosure of the information would be likely to (a) impair the Government's ability to obtain necessary information in the future, or (b) cause substantial harm to the competitive position of the person from whom the information was obtained. National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974) [National Parks I]. This test has been stated somewhat differently in the court's second opinion. Whereas the court recognizes it as a relevant inquiry, it no longer views the first part of this test as a separate element for determining the applicability of exemption four. It now treats the consideration of customary disclosure to the public as relevant to the likelihood of substantial competitive harm. Therefore, under National Parks II, the party seeking to sustain nondisclosure will no longer have the additional burden of specifically proving that the information requested is not customarily disclosed to the public. 2/ See footnote 16 of the slip opinion. This conclusion, however, does not release the Service from inquiring into whether the information was previously made available by the concessioners to the public or other Government agencies.

In order to avoid disclosure under the National Parks I and II test, it is necessary to prove that (1) the Service's concessioners actually face competition, and (2) substantial competitive injury would likely result from disclosure. Failure to prove either point will require disclosure. The trial court found that the concessioners face both competition in their day-by-day business operations and competition in the renewal of their contracts. Judge Gasch also found that competition exists among concessioners, between concessioners and businesses located outside the parks, and between concessioners and businesses located on private property within the parks. He further found that disclosure would be likely to cause the concessioners substantial competitive harm. The appellant challenged these findings as erroneous. Under the applicable standard of appellate review, the court of appeals could not, however, overturn Judge Gasch's findings unless it determined that they were clearly erroneous.

A good portion of the appellate court's opinion deals with the nature of the proof required to sustain the burden of nondisclosure. The appellant argued that the Government had to prove meaningful competition through a detailed economic analysis of the concessioners' competitive environment, utilizing such devices as customer and marketing practice surveys, detailed comparative descriptions of the nature, quality, and price of goods and services, pricing and rate-of-return statistics, and advertising expenditure records. The court of appeals ruled that such evidence would be relevant to the test for the fourth exemption, but that it would not be required. The court reiterated that generalized allegations and conclusory opinion testimony are not sufficient to sustain the burden of nondisclosure. But, it held that where the specific exemption claimed is known to the parties, the Government has adequately specified the information withheld, there is an evidentiary hearing where the appellant has an opportunity to dispute the factual basis given for exempting the requested material, and there is a record sufficient to permit meaningful appellate review, the court will not require the kinds of evidence normally associated with elaborate antitrust proceedings. As to the question of substantial competitive harm, the court held that the record need only contain substantial evidence which supports the necessary inferences leading to that conclusion. No actual adverse effect on competition needs to be shown.

After reviewing the record, the appellate court concluded that the district court's finding that disclosure of financial records would materially increase damaging competition for renewal of concession contracts is clearly erroneous. The court based its conclusion on the infrequency of renewals, the statutory preference right of satisfactory concessioners, and the practical barrier of the concessioners compensable possessory interests. The appellate court did, nevertheless, conclude that there is sufficient evidence in the record to support Judge Gasch's finding of day-to-day competition for five concessioners. As to the remaining two concessioners, the court noted that he made no specific findings as to their competitive positions. The appellate court found that the trial judge apparently relied upon presumed renewal contract competition and the testimony of the appellees' witness that, although he had no personal knowledge, he had no reason to believe that they faced a competitive situation any different from that faced by other concessioners. The court of appeals ruled

that such conjecture is insufficient to sustain the district court's finding as to these two concessioners and, therefore, it reversed. Given the findings on the existence of competition for the five concessioners, the court of appeals stated that it considered the likelihood of substantial harm to their competitive positions as virtually axiomatic, and listed selective pricing, market concentration, expansion plans, and collective bargaining as areas where disclosure of their financial reports might be harmful to the concessioners.

In addition to challenging the district court's findings as to the competitive positions of the Service's concessioners, the appellant also challenged the district court's reliance on the personalized nature of the financial reports of three of the concessioners 3/ and 18 U.S.C. § 1905 (1970) as independent bases for non-disclosure. Although the court of appeals seemingly did not want to deal with the first issue, it was disinclined to find a personal privacy concern embodied in the fourth exemption. 4/ It did allow that personalized financial data may qualify as similar files under the sixth exemption. 5/ Finding nothing in the record to show that any of the concessioners' records were personalized and the district court's conclusion on the privacy issue vague, the court has remanded the case for a determination whether the sixth exemption might apply to any of the concessioners' financial records found to be personalized. 6/

As to 18 U.S.C. § 1905 (1970), which is a criminal statute making it illegal for any Government employee to disclose to any extent not authorized by law certain financial information, the court of appeals ruled that it does not provide a basis for withholding nonexempt materials required to be released by the FOIA. 7/ In addition, the court ruled that the third exemption under the FOIA does not incorporate section 1905 by its terms because section 1905 is a statute of general applicability, rather than one which specifically defines the information to be exempted within the meaning of exemption three. 8/

The Department of Justice has asked us for our recommendation as to whether it should petition the United States Supreme Court for a writ of certiorari in this case. We are not inclined to recommend certiorari; we would, however, appreciate receiving your views on this question within

Freedom of Information Act (FOIA)

the next two weeks. The Department of Justice has also asked us for information pertaining to the confidentiality of the financial records of National Park Concessions, Inc. and Buzzard Point Boatyard Corp. In view of the remand, we request you to send a letter to these two concessioners, enclosing a copy of the decision and soliciting evidence that would assist us and the court in determining whether they face competition, and if so, whether the disclosure of their financial reports would be likely to cause them substantial competitive harm, and whether the financial records in question contain information about them of a highly personal or private nature, and if so, how and to what extent the disclosure of such records would constitute an invasion of their privacy. The concessioners should be advised that, unless they provide you with evidence of sufficient detail to support the conclusion that their financial reports are confidential within the meaning of exemption four as interpreted in National Parks I and II or the conclusion that the disclosure of such reports would constitute a clearly unwarranted invasion of their personal privacy within the meaning of exemption six, you will be required by the FOIA to release such information. 9/ The reply from each concessioner should be in the form of a letter, but each concessioner should be prepared to offer the same information in the form of an affidavit if one is subsequently requested by the Department of Justice. 10/ We are of course available to assist you in this effort and we should review the letters before they are sent. As a public service, you may also wish to provide the rest of your concessioners with a copy of the court's opinion.

If you have any questions about the decision or our requests, please call me on extension 7957.

(Sgd.) Sharon Allender
Sharon Allender

Enclosures

cc:

Assistant Secretary, Fish and Wildlife and Parks
Acting Assistant Director, Special Services, FNP
Chief, Concessions Management Division, FNP

FOOTNOTES

1/ The five concessioners are Cavern Supply Co., General Host Corp., Mountain Co., Yosemite Park and Curry Co., and Fred Harvey, Inc.

2/ Under the FOIA, the party seeking to avoid disclosure, which is normally the Government, bears the burden of proving that the circumstances justify nondisclosure.

3/ The district court's holding on privacy grounds was limited to small or individually owned concessioners. The three concessioners which the district court identified as having protectible personal privacy interests were Mountain Co., Cavern Supply Co., and Buzzard Point Boatyard Corp. Only the latter will be involved in the remand.

4/ The fourth exemption relates to trade secrets and commercial or financial information obtained from a person and privileged or confidential. 5 U.S.C. § 552(b)(4) (1970).

5/ The sixth exemption relates to personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) (1970).

6/ The court of appeals defined "personalized" to apply to those concessioners where "ownership is so limited that a business' finances can be attributed divisibly and accurately to individual stockholders or partners." Slip opinion at 24. We believe that this definition may be utilized in making the determination whether a particular concessioner's financial records qualify as "similar files" within the scope of exemption six.

7/ If the Service determines that a concessioner's financial records are exempt from the disclosure requirement of the FOIA, we believe that 18 U.S.C. § 1905 continues, under the holding of this case, to make illegal the disclosure of such records if they fall within the language of that section. In other words, section 1905 eliminates the discretion the Service would otherwise have to disclose such information. This would not be the case, however, if the information requested is clearly outside the scope of section 1905 or if its disclosure

Freedom of Information Act (FOIA)

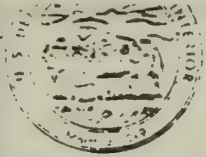
is authorized by another statute or regulation. If it is decided that as a matter of policy the Service wishes to disclose to the public all confidential financial information obtained from its concessioners, including that which would ordinarily be exempt from the disclosure requirement of the FOIA, we recommend that you promulgate a regulation pursuant to the rulemaking authority contained in 16 U.S.C. § 3 (1970) providing for such disclosure. The effect of such a regulation would be to permit what is otherwise prohibited by section 1905. But, in order for such a regulation to be valid, it would be necessary to demonstrate the reasonable relationship between the public disclosure of concessioners' confidential financial records and the use and management of the national park system. We anticipate that the promulgation of such a regulation will result in litigation testing the Secretary's authority, in the face of section 1905, to provide for discretionary disclosure through rulemaking of information which is otherwise exempt from required disclosure under the FOIA.

8/ This opinion is consistent with the position taken by the Office of the Solicitor in providing advice to the Assistant Secretary--Program Development and Budget, who formerly had the program responsibility for FOIA appeals. The opposite position was taken by the fourth circuit in Westinghouse v. Schlesinger, No. 74-1801 (4th Cir. Sept. 30, 1976). We understand that the Department of Justice is currently considering whether to seek a writ of certiorari in that case.

9/ Even if the concessioners demonstrate that their financial records are personal in nature, it must be remembered that they would not then automatically qualify for nondisclosure. As the Supreme Court has said in Dept. of Air Force v. Rose, 48 L. Ed. 2d 11, 33 (April 21, 1976), the sixth exemption does not protect against disclosures which would constitute incidental invasions of privacy, but only against such disclosures as would constitute clearly unwarranted invasions of privacy. The application of exemption six requires a balancing of the individual's right to privacy against the public's right to Government information. The limitation against a clearly unwarranted invasion of personal privacy is thought to provide the proper balance between the two rights. The Rose opinion cites S. Rep. No. 813, 89th

Cong., 1st Sess. 9 (1965), as indicating that exemption six is limited to the protection of an individual's private affairs from unnecessary public scrutiny.

10/ Of course, it is possible that National Park Concessions, Inc. and Buzzard Point Boatyard Corp. no longer object to the release of their financial reports. We suggest that you also explore this possibility with them.



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

NOV 13 1975

Memorandum

To: Director, National Park Service

From: Assistant Solicitor, Parks and Recreation

Subject: National Parks and Conservation Association v. Morton,
Civ. No. 436-72 (D.D.C.)

On October 24, we discussed with Assistant Director LaCovey the decision in the subject case handed down by Judge Gasch on October 23. Enclosed with this memorandum, which confirms our discussions on October 24, is a copy of the decision.

The current practice of the Service, when faced with a F.O.I.A. request for opening balance sheets, annual reports, or audits of concession businesses, is to invoke the exemption from disclosure that applies to commercial or financial information obtained from a person and privileged for confidential (5 U.S.C. § 552(b)(4)) if the concessioners involved formally advise:

- (1) That the requested information has not previously been made public or is not available from some other publicly accessible source; and
- (2) That disclosure of the requested information would cause a substantial likelihood of competitive harm.

Administration of this standard has required a case by case review of each request, including contact with the affected concessioner and partial disclosures where some, but not all, of the, information is exempt.

The decision of Judge Gasch essentially supports the current practices of the Service in handling requests from the public for disclosure of commercial and financial information obtained by the Park Service from concessioners operating within the National Park System.

On the issue of competitive harm, the Court ruled that national park concessioners face meaningful competition and that disclosure of the information obtained by the Park Service would cause competitive harm:

The evidence received on remand establishes that park concessioners in general and particularly those identified in this proceeding do face meaningful competition . . . The Court concludes upon consideration of the evidence submitted on remand that the concessioners' competitive position would be likely to be harmed substantially by the disclosure of information sought by plaintiff. (Slip opinion at 15.)

On the issue of information that has been previously disclosed, the Court ruled that:

To the extent the Park Service determines that exactly the same information that is publicly available in the records of another agency . . . also appears in a concessioner's filing with it, and to that extent, the plaintiff desires to have a second source of that information, the Service should, and it is hereby directed, to make it available. (Slip opinion at 15.)

The Court also found, after detailed analysis of the opening balance sheets, annual financial reports, and audits, that disclosure of certain parts of the annual financial reports is required by the FOIA:

The Court finds no reason for not disclosing the following information from the annual financial reports of concessioners here involved: (a) Annual Financial Report, Schedule B, except for supporting details; (b) Annual Financial Report, Schedule M; and (c) Annual Financial Report, Attachment 10-356(b), except for occupancy percentages. (Slip opinion at 16.)

Thus, the Court's opinion requires that the Service continue to handle FOIA requests for concessioner financial information on a case by case basis. Each request must be analyzed on its own merits with respect to the particular information sought. For each request, the affected concessioner should be contacted to solicit his input on whether the

requested information is publicly available elsewhere or previously made available by the concessioner, and whether its disclosure would be likely to cause substantial competitive harm. The concessioner should be requested in detail to articulate the precise bases for the alleged harm. This information must be carefully analyzed, since the decision to withhold and the rationale for withholding is a National Park Service decision, not a concessioner decision. Accordingly, the Service must examine the requested information and segregate for disclosure information that has been made public elsewhere or information that is of a noncompetitive nature.

The Court directed that certain information contained in the annual financial reports for the eight named concessioners be released by the Park Service to the plaintiff at the earliest possible date. You should comply with the Court's order by immediately releasing to the plaintiff the following information from the annual financial reports of National Park Concessions, Inc., Mountain Company, Inc., Cavern Supply Co., Fred Harvey, Inc., Yosemite Park and Curry Company, General Host, Inc., and Buzzard Point Boatyard for the current year and for each preceding year included in your records: Schedule B (except for supporting details), Schedule M, and Attachment 10-356(b) (except for occupancy percentages). If the annual reports for preceding years contain different information in these schedules than the forms before the court, you should make available the franchise fee, schedule of prepaid expenses, and the annual report of statistical information (except occupancy percentages) for those years.

When this information is sent to the plaintiff, you should also offer to disclose information that is publicly available elsewhere should he so desire. If the plaintiff indicates that he does desire to have such information, then you should immediately make it available to him.

You should also take note of the Court's opinion respecting the private nature of some concessioner information. You may recall that our memorandum to you of September 12 cautioned that some information contained in concessioner files, particularly those of small family-run business, may be subject to the exemption protecting personal privacy (5 U.S.C. § 552 (b)(6)). The Court agrees with this assessment:

In the case of small or individually owned concessions, financial information is personalized and should be protected on grounds of individual privacy. (Slip opinion at 16.).

In light of this point, and in view of the fact that the Service has previously, on the advice of this office, disclosed at least some of the requested information applicable to Prince William Trailer Park, we suggest that the owner of Prince William Trailer Park, Mr. Enders, be contacted a second time prior to any additional disclosures of information pertaining to his concession. Mr. Enders should be fully informed of the broad nature of the plaintiff's request, that it covers all audits, annual financial reports, and opening balance sheets maintained in Park Service records on his business. A written waiver with respect to such information should be obtained prior to its disclosure to the plaintiff. Should Mr. Enders object to further disclosures on the grounds of personal privacy or competitive harm, you should in any event disclose those schedules of the annual financial reports discussed above.

Please contact John Griggs of this office should you have any further questions on this matter.

Enclosure

(Sgd.) David A. Watts

David A. Watts



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SEP 12 1975

Memorandum

To: Director, National Park Service

From: Assistant Solicitor, Parks and Recreation

Subject: Disclosure of concessioner financial records

This memorandum addresses the problem of the applicability of three statutes to financial information submitted to the National Park Service by concessioners. This information includes opening balance sheets, audits, annual financial reports, and similar information. The three statutes in question are the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a and 18 U.S.C. § 1905.

Section 1905 of Title 18 makes it a crime to disclose confidential financial information in any manner or to any extent not authorized by law. There are numerous cases which have determined that this statute does not specifically exempt financial information from the disclosure requirements of the FOIA. In other words the FOIA is a statute which authorizes disclosure within the context of 18 U.S.C. § 1905. M.A. Shapiro and Co., v. S.E.C., 339 F. Supp. 467, 470 (D.D.C. 1972); Sears, Roebuck & Co., v. G.S.A., 509 F.2d 527 (D.C. Cir. 1974); Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769 (D.D.C. 1974); Hughes Aircraft Co. v. Schlesinger, 384 F. Supp. 292 (C.D. Cal. 1974).

Section 1905 does not provide a standard for ascertaining what types of information may be withheld. Rather, it provides a criminal penalty for disclosure if no other law authorizes disclosure. Whether or not disclosure is "authorized" must be determined under the provisions of the FOIA. Once such a determination has been made, it is conceivable that Section 1905 would apply to disclosure not authorized by the FOIA.

The FOIA, 5 U.S.C. § 552, requires that information retained by the government be promptly disclosed to the public on receipt of a specific request, unless disclosure is exempted by any of the nine exemptions contained in 5 U.S.C. § 552(b). Of these nine exemptions,

two are potentially applicable to concessioner financial information.

The fourth exemption, 5 U.S.C. § 552(b)(4), applies to:

trade secrets and commercial or financial information
obtained from a person and privileged or confidential.

This exemption applies only if disclosure of the information would impair the government's ability to obtain it in the future or if disclosure would cause a substantial likelihood of competitive harm. National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). It was held in National Parks and Conservation Association that disclosure of concessioner financial information would not impair the government's ability to obtain the information, and the case was remanded for a hearing on whether the competitive positions of the concessioners would be harmed by disclosure. A decision on the competitive harm issue is still pending.

The second exemption that might apply to concessioner financial information is 5 U.S.C. § 552(b)(6):

personnel and medical files and similar files the
disclosure of which would constitute a clearly unwarranted
invasion of personal privacy.

This exemption protects individual persons, not corporate entities, and it, therefore, exempts only the financial information submitted by concession businesses that are not corporations or that are "closely held" corporations. Files maintained by the Service which contain financial information of concessioners who are individuals (in lieu of corporate entities) or which contain financial information on individuals in corporations may qualify as "similar files" that may be subject to the exemption. See, Wine Hobby U.S.A. Inc. v. I.R.S., 502 F.2d 133 (3d Cir. 1974).

The Privacy Act, 5 U.S.C. s 552a, precludes the disclosure of any record about an individual, including his financial transactions, without the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be required under the FOIA. Therefore, the FOIA remains as the standard for determining whether to allow disclosure with one slight modification. The Privacy Act essentially abolishes the "sound grounds" test under the (b)(6) exemption of the FOIA, whereby agencies were authorized to disclose information if an exemption applies but sound grounds did

not exist for invoking it. Thus, to the extent that the (b)(6) exemption applies (i.e., may be properly invoked) to financial information submitted by family owned concessions, partnership concessions, or closely held corporate concessions, the Privacy Act prohibits disclosure of such information without first obtaining the permission of the individual to whom such information pertains.

In applying the (b)(6) exemption, this Department has concluded that it does not protect information of an entrepreneurial character. Therefore, most determinations on disclosure of concessioner financial data must be made under the (b)(4) exemption. The (b)(6) exemption may be used only with respect to information that pertains to an individual in a personal, nonbusiness sense.

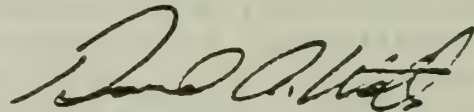
The crucial determination to be made in all cases is whether (b)(4) or (b)(6) under the FOIA applies to the concessioner financial data. This determination must be made by the National Park Service, with the assistance of the Solicitor's Office, and not be the concessioners. Information supplied by the concessioners, however, may be referred to in making such a determination. In fact, contacting the concessioner pursuant to 43 C.F.R. 2.13(b) should be the first step in any determination, since his written approval to disclose information avoids the pitfalls of the Privacy Act and Section 1905.

In making a (b)(4) determination the concessioner should be asked the following questions, answers to which should be received in writing prior to authorizing a withholding of the information:

- (1) Is any of the information in the requested documents information which the concessioner has previously made public or which may be made public in the future? Particularly, has any of the information been disclosed through public filings with state or federal regulatory agencies? Any items of information which have been made public should be identified.
- (2) With respect to those items which have not previously been made public, are these items which the concessioner would customarily decline to disclose to the public?
- (3) Would disclosure of any of the items not previously disclosed and which would not customarily be disclosed cause competitive harm to the concessioner, and, if so, to what extent? Statements asserting competitive harm should be supported by specific factual or evidentiary detail.

Freedom of Information Act (FOIA)

In handling requests for information of non-corporate concessioners, a (b)(6) determination may also be necessary. Here we must re-emphasize that for (b)(6) to apply, the information must relate to the individual as a person and not as a business. The test of whether (b)(6) applies is a difficult test to determine, since the right of the public to know must be weighed against the individual's interests in maintaining personal privacy. Although there are no cases that have litigated the (b)(6) issue for national park concessioners, we would assume that the interests of the public in knowing about concessioner operations are fairly important. Therefore, the extent to which disclosure would impinge the personal privacy of the individual is the crucial matter to determine. For a family owned business, the interests of the individual would probably dominate. For business partnerships and closely held corporations, the personal privacy considerations may be somewhat less important. We can only counsel a case by case approach on this point, with close coordination with the Solicitor's Office.



David A. Watts

CONCESSIONER PERSONNEL

A. LABOR RELATIONS AND STANDARDS

This part deals with laws and regulations applicable to concessioners covering safety in the work place, fair labor standards, minimum wage and union activities.

1. Law

29 U.S.C. Chapter 15 (Occupational Safety and Health)

This legislation deals with personal illnesses and injuries arising out of work situations that result in lost production and wages and high medical expenses and disability compensation payments. The legislation encourages joint labor/management efforts to reduce unnecessary health and financial burdens. The law applies to every private business in the country.

The Act permits States to promulgate standards under State law over any occupational safety or health issue with respect to which no Federal standard is in effect, augmenting the mandatory Federal standards.

29 U.S.C. 201 et seq.

Establishes standards of labor including hours of work and minimum wages. The 1977 law specifically included concessioners respecting minimum wage.

29 U.S.C. 151 et seq.

Provides protection for workers who actively seek association with labor organizations, self organization, and unions etc., to represent them in negotiating the terms and conditions of their employment.

2. Regulation

29 CFR Part 1977

Provides interpretation of various provisions of section 11(c) of the Occupational Safety and Health Act (P.L. 91-596). In general the section prohibits the discharging of or discrimination against an employee because the employee exercised a right contained in the law that adversely effects his employer.

36 CFR Part 8

PART 8—LABOR STANDARDS APPLICABLE TO EMPLOYEES OF NATIONAL PARK SERVICE CONCESSIONERS

Sec.

- 8.1 Definitions.
- 8.2 Basis and purpose.
- 8.3 Applicability.
- 8.4 Child labor.
- 8.5 Federal and State labor laws.
- 8.6 Access for investigators.
- 8.7 Complaints; appeal.
- 8.8 Record keeping.
- 8.9 Filing of labor agreements.
- 8.10 Posting of regulations.

AUTHORITY: Sec. 3, 26 Stat. 843, as amended, secs. 1-3, 39 Stat. 535, as amended, sec. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 363.

SOURCE: 24 FR 11053, Dec. 30, 1959, unless otherwise noted.

§ 8.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior, the Under Secretary, an Assistant Secretary, or such other officer or employee of the Department of the Interior as the Secretary may designate.

(b) "Director" means the Director of the National Park Service.

(c) "Superintendent" includes a custodian, caretaker, manager, or other person in charge of a national park.

(d) "National park" includes a national monument or other area under the administrative jurisdiction of the National Park Service of the Department of the Interior.

(e) "Concessioner" includes any individual, partnership, corporation, or other business entity engaged in operating facilities within or without a national park for the accommodation of visitors to the park under a contract

with or permit from the Secretary or the Director.

(f) "Employee" includes any individual employed by a concessioner in connection with operations covered by a contract with or permit from the Secretary or the Director.

(g) "Executive or department head" includes any employee whose primary duty is the management of the business of the concessioner, or a customarily recognized department thereof, and who customarily and regularly directs the work of other employees

with authority to employ and discharge other employees, or whose suggestions and recommendations as to the employment, discharge, advancement or promotion of such employees will be given particular weight by the concessioner, and who customarily and regularly exercises discretionary powers.

(h) "State" means any State, Territory, possession, or the District of Columbia.

§ 8.2 Basis and purpose.

The public using the national parks is better served when the employees of the concessioners enjoy the benefits of fair labor standards and when, in this respect, they are treated at least as well as those employed in similar occupations outside such areas, but within the same State. This principle is the basis of the regulations in this part and their purpose is its implementation.

§ 8.3 Applicability.

This part shall not apply to:

(a) Concessioners providing and operating medical services.

(b) Personal servants.

(c) Employees engaged in agricultural activities, including the care, handling, and feeding of livestock.

(d) Detectives, watchmen, guards, and caretakers.

(e) Bona fide executives or department heads.

(f) Solicitors or outside salesmen whose compensation is chiefly on a commission basis.

(g) Professional sports instructors and entertainers.

(h) The following employees, when approved by the Director: Employees for whom relief is clearly impracticable because of peculiar conditions arising from the fact that operations are carried on in areas having no resident population or are located at long distances from a supply of available labor; employees whose employment requires special or technical training or skill, where no person capable of providing relief is available within a reasonable distance; employees in small units accessible only by trail or remote from centers of activity, or operating on a small volume of business primarily for the convenience of the public.

§ 8.4 Child labor.

No person under 16 years of age may be employed by a concessioner in any occupation. No person under 18 years of age may be employed for more than 8 hours a day, 6 days a week or between the hours of 10 p.m. and 6 a.m. No person under 18 years of age may be employed in any occupation in which the employment of such a minor is prohibited by the laws of the United States or of the State in which he is employed, even though, but for the provisions of this section, compliance with such laws would not be compulsory. For the purpose of proving age under this regulation a State employment or age certificate or the corresponding Federal certificate of age shall be accepted as conclusive proof of the minor's age.

§ 8.5 Federal and State labor laws.

Concessioners shall comply with the standards established from time to time, by or pursuant to Federal or State labor laws otherwise applicable in the State of employment, such as those concerning minimum wages, child labor, hours of work, and safety, which would apply to the employees of the concessioner if his establishment were not located in a national park.

§ 8.6 Access for investigators.

Concessioners shall permit representatives of this Department and, when appropriate and authorized representatives of other Federal or State agencies, access to any of their places of employment for the purpose of examining pay rolls and other records and otherwise to ascertain the facts with respect to compliance with the regulations in this part and State labor laws. The report of any investigation concerning a violation of the regulations in this part shall be submitted to the superintendent of the national park involved.

§ 8.7 Complaints; appeal.

Any question pertaining to the interpretation or application of or compliance with this part which cannot be satisfactorily settled between a concessioner and his employee, employees, or employee representative may be referred for review by any of the parties

concerned to the Director, National Park Service. Any person adversely affected by the decision of the Director, National Park Service, may appeal to the Director, Office of Hearings and Appeals, in accordance with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR Part 4, Subpart B, and the special procedural rules in Subpart G of 43 CFR Part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

[36 FR 7184, Apr. 15, 1971]

§ 8.8 Recordkeeping.

Concessioners shall for a period of 3 years keep records of the name, age, address, and occupation of each of their employees, the rate of pay and the amount paid to each employee each pay day, the hours worked each day and each work week by each employee and such other information concerning employees as the Director may require.

§ 8.9 Filing of labor agreements.

Within 60 days after the effective date of the regulations in this part (January 1, 1949), concessioners shall file with the Director of the National Park Service a copy of each labor agreement in effect on the effective date of the regulations in this part, covering rates of pay, hours of work, and conditions of employment duly negotiated with their employees as a whole or by class, craft, or other appropriate unit. Thereafter, on July 1 of each year concessioners shall file copies of all such agreements then in effect with the Director of the National Park Service.

§ 8.10 Posting of regulations.

Concessioners shall post in a conspicuous place easily accessible to all employees copies of the regulations in this part in such form as the Director may approve.

3. Policy

See Regulations.

4. Procedures

Citations for OSHA violations are to be made only by authorized representatives of the Secretary of Labor. Service personnel may unofficially cite concessioners for violations of 36 CFR. The better procedure to follow however, would be to seek to have Department of Labor inspectors make all OSHA inspections in the park or area.

In situations where a concessioner or a union seek help or advice, park managers must maintain a posture of neutrality by doing nothing that would be construed as helping or hindering either the concessioner or the union.

The Superintendent is to provide the concessioner the regulations contained in 36 CFR Part 8 by reproducing the CFR or as the regulations are stated above. The concessioner is to post the regulations in a conspicuous place for the benefit of all employees.

B. EEO, NONDISCRIMINATION AND AFFIRMATIVE ACTION

1. Law

P.L. 88-352 (July 2, 1964) - Civil Rights Act of 1964

Title VII--Injunctive Relief Against Discrimination in Places of Public Accommodation

SEC.201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Executive Order No. 11246 Dated September 24, 1965

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under

Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Executive Order 11375 AMENDING EXECUTIVE ORDER NO 11246,

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

“(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

“(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.” (4) Section 203 (d) of Part II is revised to read as follows:

“(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.”

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

Title V, of the Rehabilitation Act of September 26, 1973
(P.L. 93-112 as amended in 1978)

SEC. 503. (a) Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(6). The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section.

(b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

NONDISCRIMINATION UNDER FEDERAL GRANTS

SEC. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Age Discrimination in Employment Act of December 15, 1967
29 U.S.C. 621 (P.L. 90-202)

§ 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

§ 630. Definitions

For the purposes of this chapter—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

2. Regulations

29 CFR, PART 1625--Age Discrimination in Employment Act

§ 1625.2 Discrimination between individuals protected by the Act.

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals within the 40-70 age bracket. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.

(b) The extension of additional benefits, such as increased severance pay, to older employees within the protected age bracket may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. The extension of those additional benefits may not be used as a means to accomplish practices otherwise prohibited by the Act.

§ 1625.4 Help wanted notices or advertisements.

(a) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "college student," "recent college graduate," "boy," "girl," or others of a similar nature, such a term or phrase deters the employment of older persons and is a violation of the Act, unless one of the exceptions applies. Such phrases as "age 40 to 50," "age over 65," "retired person," or "supplement your pension" discriminate against others within the protected group and, therefore, are prohibited unless one of the exceptions applies.

(b) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a lawful purpose.

41 CFR

§ 60-1.40 Affirmative action programs.

(a) *Requirements of programs.* Each nonconstruction contractor which has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has contracts (including Government bills of lading) which, in any 12-month period total \$50,000 or more, or reasonably may be expected to total \$50,000 or more; or (3) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, shall develop a written affirmative action program for each of its establishments. Each nonconstruction contractor shall require each subcontractor which has 50 or more employees

and (i) has a subcontract of \$50,000 or more; or (ii) has subcontracts (including Government bills of lading) which, in any 12-month period total \$50,000 or more, or reasonably may be expected to total \$50,000 or more; or (iii) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, to develop a written affirmative action program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority and female employment and an evaluation of opportunities for utilization of minority group and female personnel. The contractor's program shall provide in

detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups and women, including, when there is underutilization or other deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity.

**Subpart B—Required Contents of
Affirmative Action Programs**

§ 60-2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.

§ 60-2.15 Compliance status.

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program, and its good faith efforts to make its program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and OFCCP should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

3. Policy

Management Policies Book, Chapter VIII
Employees And Nondiscrimination

Concessioners and their employees shall not discriminate against any individual because of race, creed, color, religion, sex, age, national origin, or physical or mental handicap.

Concessioners with 50 or more employees shall have approved affirmative action plans to assure equal employment opportunities and should adhere to the Department's labor standards and to applicable Federal and State laws.

4. Responsibilities

Upon the execution of a concession contract or permit, and as a part of the annual review of the operation, the Superintendent should determine if the concessioner has an applicable approved affirmative action program plan. If not, one should be developed by the concessioner within 120 days of the commencement of the contract.

The Affirmative Action Program Plan is to be filed by the concessioner with the Office of Federal Contract Compliance Programs (OFCCP). The affirmative Action Plan will be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan unless within 45 days thereafter the Director of OFCCP has disapproved such plan.

If additional copies of EEO posters are required, Regions and parks should contact their local Office of Federal Contract Compliance, Department of Labor, or they may contact the Office of Federal Contract Compliance in Washington, D.C. on (202) 523-8743.

C. TRAINING

1. Law, Regulation and Policy

None.

2. Responsibility

During peak visitor seasons, the size of the concessioner's staff may well exceed the number of Park Service employees. The great majority of the concessioner employees are in positions which involve frequent visitor contact. To the visitor, one employee is as likely a source of park information as another. It is highly desirable, therefore, that concessioner employees be well informed on at least the following:

- a. The nature and purpose of the National Park Service
- b. The resources of that particular park
- c. The "do's" and don'ts" expected of all park users
- d. Hours of operation and location of various services within the park.
- e. Knowledge of facilities outside of park, i.e., distance from park, types of services offered, etc.

Superintendents are urged to develop, in cooperation with the concessioner, an orientation program to accomplish these objectives. It is desirable that the mutual commitment to such a program be documented in the concessioner's Operating Plan.

Depending on the size of the work force and the amount of employee turnover, concessioners will often need to develop formal training programs to teach the basic job skills to their personnel, however, the content and extent of such a program is normally within the purview of the concessioner's responsibility. In some cases, however, and particularly where poor training has become a problem, the Superintendent may find it desirable to document the request for a concessioner's personnel training program in the Operating Plan.

D. EMPLOYMENT OF NPS PERSONNEL DEPENDENTS

1. Law

None.

2. Regulation

43 CFR, Part 20

§20.735-23 Outside Work And Interests

(4) A regular employee shall not use his or her Government employment to influence or coerce, or give the appearance of influencing or coercing, a person to provide financial benefits to the employee or another person with whom he or she has family, business or financial ties.

The broad interpretation given to the regulations for our purposes, is that employees' behavior must be such that it does not result in or create the appearance of a conflict of interest or of hampering the employees' independence or impartiality in dealing with concessioners.

3. Policy

Management Policies Manual, Chapter VIII
Employment of NPS Personnel Dependents

All instances of employment by a concessioner of the spouse or minor children of National Park Service employees shall have the prior approval of the official in charge of the organization entity in which they work (Superintendent, Manager, Regional Director, Director). It is a general policy of the Park Service to grant such approval except for the spouses or minor children of Superintendents, Assistant

Superintendents, Concessions Specialists and others who have official responsibilities for concession management, evaluations, rate approval or contract compliance concerning the concessioner for whom the dependent proposes to work.

Approval for employment by concessioners of dependents of the above categories can be granted only by the Director, National Park Service.

4. Procedures

All requests for approval of employment of dependents shall be in writing and shall indicate the nature of the duties of the NPS employee and the nature of the duties as well as the compensation proposed for the dependent. Requests which require approval of the Director, NPS, shall be submitted through channels. No employment of a dependent may begin until written approval is received from the appropriate official.

For purposes of this policy, a person is a minor until age 21 is attained.

HANDCRAFTS, GIFTS AND MERCHANDISE

A. LAW

P.L. 96-95; October 31, 1979

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Prohibits the removal, sale, purchase, exchange and transportation of any archaeological resource from Federal lands and other lands where State and local laws exist to protect such resources.

P.L. 96-487; December 2, 1980

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

Section 803 permits the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tool or transportation and for the making and selling of handcraft articles out of non-edible by-products of fish and wildlife resources taken for consumption and customary trade.

B. REGULATION

36 C.F.R., §2.1

§2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts of products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statute, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

36 C.F.R. § 13.40-13.51 National Park System Units in Alaska

Regulations provide detailed information and procedures derived from P.L. 96-487, above.

C. POLICY

Management Policies Manual, Chapter VIII Handcrafts, Gifts and Merchandise

Promoting the sale of United States made handcrafts including authentic Indian/Eskimo handcrafts relating to the cultural, historical, natural and geographic characteristics of park areas is encouraged and there shall be a continuing effort to enhance the scope and supply of local handcrafts where they exist and to establish them where they do not. In furtherance of this policy the revenue derived from the sale of United States handcrafts and authentic Indian/Eskimo handcrafts will be exempt from the franchise fee payment.

Concessioners may offer for sale merchandise that is customarily sold in similar types of retail outlets.

Foreign made merchandise is not to be encouraged but is not prohibited.

Merchandise that offends normal standards of taste or which violates conservation principles is not to be sold.

The sale of original prehistoric or historic archeological specimens, regardless of age, is inconsistent with the Service's conservation ethic and is, therefore, prohibited. The sale of clearly labeled replicas of artifacts is authorized.

D. PREFERRED MERCHANDISE

1. United States Handcrafts

For an item to be classified as a United States Handcraft that is subject to exclusion from the franchise fee computation, the following criteria must be satisfied.

a. It must be handcrafted by United States craftspeople residing and working within the fifty states, United States territories, United States possession or United States trust lands.

b. It must be predominantly individually produced under conditions not resembling an assembly line or factory system. The term "production crafts" defines those handcrafted items which are produced in quantity, but which retain the individual attention of handcraftspeople using individual handcraft processes, and are therefore considered handcraft.

c. It must be produced by using such devices or mechanical implements that allow the manual skill of the maker or makers to condition the overall shape and design of each individual item. For example: the potter's wheel, weaving loom, wood lathe, buffing machine, etc.

d. Jellies, jams, preserves and other prepared foods, even if "homemade" are not considered handcrafts. However, if the product is in a handcrafted container meeting the criteria stated above for United States handcrafts, it is considered handcraft.

e. In addition to the items commonly identified with handcrafts, hand processed photographs, handprints (block prints, silk screen prints, lithographs, etchings) sculpture and paintings are also considered handcrafted items.

2. Authentic United States Indian/Eskimo Handcrafts

To be sold and labelled as authentic handcrafts made by United States Indians/Eskimos, the article must meet the criteria in subparagraph 1 above and also meet the following standards which comply with the Department's Indian Arts and Crafts Board definition for such handcrafts.

a. The item must be made entirely, including any components, by United States Indians/Eskimos residing within the United States. The use of findings, hand tools and equipment for buffing, polishing, grinding, drilling or sewing is permitted.

b. The item must be made only from natural materials except stabilized or treated turquoise is permissible.

c. No portion of the item can be made by machine except mechanically pressed silver beads which are permissible. When used, the item must be labeled "machine-made silver beads."

Items purported to be Indian/Eskimo handcrafted but are not because they do not meet all of the above criteria are considered imitations of Authentic United States Indian/Eskimo handcrafts. They do not qualify as handcrafted merchandise and will not be excluded from the franchise fee computation. They may, however, be preferred items if they meet the criteria of park related items in 3 below. The reason for this limitation is to encourage the making and selling of Authentic United States Indian/Eskimo handcrafts. Permitting the exclusion of the franchise fee on an imitation would dilute NPS' mission to protect our national heritage.

3. Park Related Items

Articles or items associated with or representative of the park or its geographical region should be displayed along with United States handcrafts. Items that should be strongly encouraged may include but not limited to books, maps, merchancially printed photographs and prints (including scenes on calendars, china plates) jellies; jams and preserves and floral arrangements, etc.

Unless they meet the criteria stated for United States handcrafts, park related items are not to be excluded from the franchise fee computation.

4. Sources of Handcrafts

The Superintendents and/or the concessioner are encouraged to call upon the Indian Arts and Crafts Board of the Department of the Interior, concerning sources, availability or authenticity of United States Indian/Eskimo Handcrafts. In the case of handcrafts made by other than United States Indians/Eskimos, it is suggested that whenever possible, Superintendents and/or

concessioners call upon local craft guilds as a resource. The WASO Concessions Office may be able to assist.

E. ACCEPTABLE MERCHANDISE

Items necessary for visitor use and enjoyment of the parks including but not limited to groceries, camping supplies, automobile needs, personal items, clothing, film, and gifts or souvenirs of types the public would generally expect to find available in a similar retail outlet located in a similar area to the park.

The following list is representative, but not all inclusive, of the types of merchandise which are acceptable:

1. Novelty type items which identify the park simply by area or name using a decal or picture of the area or of a popular feature, inscribed on such items as pennants, sweatshirts, T-shirts, linens, paper weights, stationery, etc.

2. Commercially or machine made Indian/Eskimo type merchandise.

3. Replicas of artifacts

4. Printed material including books, maps, posters, table mats, etc.

5. Games, toys, and books that appeal to children.

6. Items made from material symbolic or representative of those found in the general area, but not taken from National Park Service property and which comply with the following conditions:

- a. Petrified wood, minerals and stones must have at least one face or surface of the item polished to distinguish it from the natural state as might be found in the park.

- b. Packaged seeds or seeds of any flora used in making a handcraft item must be labelled as to origin.

- c. Animal skins fabricated into such items as leather gloves, skirts or jackets; mukluks; cowhide belts, purses, jackets, etc., are acceptable, provided they are fabricated from commercially raised animals and so labelled.

- d. Other merchandise not restricted under Unacceptable Merchandise in Paragraph F below.

F. UNACCEPTABLE MERCHANDISE

1. General

While it is realized that no practicable objective standards can be devised for determining taste, intrinsic value and other subjective criteria, it is incumbent upon the National Park Service and its concessioners to scrupulously avoid displaying or offering for sale any article which persons of normal sensitivity might consider obscene, sexually oriented, suggestive, indecent, blasphemous, profane, vulgar, or in ridicule of established institutions and customs, or reflect a lack of concern with the environment.

In addition, the following items can not be offered for sale by concessioners:

a. Archaeological specimens, cave formations, and artifacts or objects and materials that are protected by any local, State, Federal or tribal laws now or hereinafter promulgated may not be incorporated as a part of a hand-crafted item and sold, regardless of the origin of the material.

b. Plant materials and other natural materials from National Park Service areas cannot be incorporated into merchandise items as it is illegal to remove natural materials from these areas for commercial purposes.

c. Native and imported animal skins or parts of animals which are not commercially raised are not to be sold or incorporated into merchandise.

d. All merchandise which is hazardous, harmful, or illegal.

e. Articles which are mislabeled as to character or origin (including handcrafts which are mislabeled as "Authentic" or "Genuine" United States Indian handcrafts), or otherwise misrepresented or which do not meet legal labeling requirements.

f. Merchandise including film, groceries and other products which have exceeded the producer's specific "Do not sell after" date.

2. Exception for Alaska Residents

Restrictions (b) and (c) above may not be applicable to certain Alaskan made articles. For specific information see 36 C.F.R. subparagraph 13.40-.51 and Section 803, ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.

G. FOREIGN MERCHANDISE

Foreign made merchandise is not to be encouraged but is not prohibited. It is to be displayed in such a manner as not to conceal or upstage United States products and especially United States handcrafts.

H. LABELING AND DISPLAY

All items are to be labeled and displayed in such a way that the purchaser is not confused as to the price, origin (if foreign made, and whether or not it is handcrafted) of the item. Merchandise displays should effectively enhance a pleasant shopping environment and not distract from the overall ambience of the park and its specific mission. Stores should be well organized and departmentalized to the greatest extent possible.

1. Labeling

All merchandise must be properly marked individually or by display as to selling price. Acceptable methods include stickers, grease pencils and hang tags. Markings are to be neatly prepared and attached in a way that does not conceal labels of origin or other identification.

a. UNITED STATES HANDCRAFTS

Merchandise meeting the criteria established for United States handcrafts must be so labeled. The items may be identified by display provided the entire display is comprised of the same type United States handcrafts. The authenticity of such items must be clearly labeled and at the request of park management be verifiable by the concessioner.

b. IMITATIONS AND REPRODUCTIONS

Imitations of United States handcrafts and Authentic United States Indian/Eskimo handcrafts must be identified as such and in a way that the purchaser is not misled into thinking that the items are United States handcrafts.

c. FOREIGN MERCHANDISE

Foreign merchandise must be properly labeled to indicate the origin of production and/or assembly.

2. Display

a. PREFERRED MERCHANDISE

Prominent sale areas are to be used and merchandising techniques practiced that promote and encourage the sale of Preferred Merchandise.

b. SIGNAGE

Amateur, handmade, non-professional signs and labels are to be used only in emergencies. If signs are handprinted, they should be done by a professional letter or sign painter.

I. DOCUMENTATION FOR MERCHANDISE EXEMPT FROM FRANCHISE FEE

1. United States Handcrafts

a. CERTIFICATION

Vendors, (or associations of producers) of handcrafted articles must certify in writing to the concessioner (for his/her benefit) that their products meet the criteria established in these Guidelines. See Exhibit 1 for a sample of Certification of Handcrafts. This should be done as part of the normal billing procedure or with an invoice certification statement such as, "The merchandise covered or so designated on this invoice meets the National Park Service criteria for United States Handcrafts and/or 'Authentic' United States Indian/Eskimo Handcrafts." The concessioner, when taking the franchise fee exclusion for handcraft sales, should be prepared to produce such certification at the park.

b. REQUIRED DOCUMENTATION FOR FRANCHISE FEE EXCLUSION

The concessioner must establish a system for tracking and verifying the total revenues claimed for exception from franchise fees.

The National Park Service will not allow any sale to be excluded from the franchise fee computation unless those sales are fully documented, certified and independently verifiable as United States handcraft. The following example shows a method which could be used to meet this requirement.

One example method:

- United States handcrafted items offered for sale would have special marking or color codes to easily distinguish the labels of franchise fee excludable items from other merchandise, and. . .

- When a United States handcrafted item is sold, a special register key would be used to record the sale if such a register is available, and. . .

- Separate accounts would be maintained to record inventories and purchases of handcrafted items.

J. APPEALS

The subjects of handcraft authenticity and of merchandise acceptability are by nature imprecise and honest differences of opinion can arise. Settlement of such differences should be at the lowest possible level and should include consultation with persons having a specialized knowledge of the particular field.

1. Park Level

a. INITIAL DETERMINATION

The Superintendent may:

(1) Refuse to accept a Certification of Handcraft when he/she has a basis for believing the item does not meet the criteria in paragraph D, above.

(2) Declare an item unacceptable under the criteria set forth in paragraph F.

b. INITIAL APPEAL

(1) The concessioner's appeal, if he/she desires to make one, should also be based on the criteria in paragraphs D and F. The concessioner and the Superintendent may bring in local experts, arrange a visit to the place of manufacture, consult with other parks or the region, and take any other steps which may facilitate agreement.

(2) The Superintendent's decision on the appeal must be in writing, provide reasons, and establish a reasonable deadline for appeal to the region.

2. Region

a. The concessioner's appeal must be in writing and set forth his/her basis.

b. The Regional Director's decision must include consideration of as many as possible of the following:

(1) Inspection of the merchandise or of photos,

(2) Consultation with knowledgeable parties, in or out of the National Park Service,

(3) Sending a representative (preferably with a concessioner representative) to the place of manufacture,

(4) Consultation with other parks, regions, or WASO who may have encountered the same item.

c. The decision must be in writing and establish a reasonable deadline for appeal to the Associate Director, Park Operations, WASO.

3. WASO

a. Upon receipt of an appeal, the Concessions Division will arrange for consultation with the Conference of National Park Concessioners. The Division also maintains a list of potential handcraft consultants.

b. The procedures for resolving each case will be agreed to as the situation requires between Concessions Division and the Conference. As a minimum, the Conference will be invited to submit written comments which will be included verbatim in a report from the Concessions Division to the Associate Director, Park Operations.

c. The decision of the Associate Director, Park Operations is final.

4. Action Pending Decision on Appeals

a. FRANCHISE FEES

During resolution of an appeal, the concessioner is to hold in escrow the franchise fees which would otherwise be payable on the item. Once a decision is made, unless there is to be further appeal, the franchise fee must be paid, if otherwise due, within thirty days.

b. UNACCEPTABLE ITEMS

Items will be removed from the shelf when the Superintendent determines that such items are unacceptable. They should not be restored unless the concessioner's appeal is upheld.

CERTIFICATION OF HANDCRAFTS

In order to comply with certain provisions contained in our contract with the National Park Service, and to encourage the sale of articles made by hand in the United States or its territories, the Park Service has set certain guidelines which define local handcrafts. Their definition is as follows:

1. They must be handcrafted by United States craftspeople residing and working within the fifty states, United States territories, United States possessions or United States trust lands.

2. They must be predominantly individually produced under conditions not in an assembly line or factory system. The term "production crafts" defines those handcrafted items which are produced in quantity, but which retain the individual attention of handcraftspeople using individual handcraft processes, and are therefore considered handcraft.

3. They must be produced by using such devices or mechanical implements that allow the manual skill of the maker or makers to condition to overall shape and design of each individual item. For example: the potters wheel, weaving loom, wood lathe, buffing machine, etc.

4. "Authentic" handcrafts made by United States Indians/Eskimos which are:

a. United States Indian/Eskimo handcrafted--meaning the skillful and expert use of the hands in making products, by Indians residing within the United States, and permits the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, or sewing.

b. Not made by machine or from unnatural material except stabilized or treated turquoise. Mechanically pressed silver beads are permissible provided the item is labeled "machine-made silver beads."

You, or your firm, supplies us (the concessioner) with the following items:

If these items meet the production standards listed above, will you kindly complete the certificate below and return same? If not hand delivered, you may mail this certificate to us prior to our placing an order with your company. Your cooperation will be appreciated.

CONCESSIONS

NPS-48

Handcrafts, Gifts and Merchandise

EXHIBIT 1
Chapter 28
Page 2

Very truly yours,

(Concessioner)

I certify that the items listed above meet the National Park Service
Production Standards for handcraft items as defined in their handcraft
policy and guidelines.

Date

Firm Name

By

RESERVATIONS AND CONVENTIONS

A. LAW, REGULATION AND POLICY

1. Law

None

2. Regulation

None

3. Policy

Management Policies Manual, Chapter VIII
Reservations and Conventions

National Park Service concessioners may accept reservations and deposits for the visitor facilities and services (accommodations) they provide. Such reservations will be subject to procedures which assure:

a. Accommodations in the parks serve the primary purpose of providing for public use and enjoyment of the park areas.

b. Accommodations are available to a broad spectrum of visitors.

c. No one category of visitor gains special privileges, whether through group affiliation, prepayment of substantial advance rental or other means.

d. Concessioners are encouraged to seek business (tour and convention) in the off season or in underutilized facilities because resulting revenues may provide the margin needed to keep the concessioner open for the general public.

B. RESERVATIONS-INDIVIDUAL VISITORS

1. Comparability

Concessioners should develop reservation procedures patterned after those businesses that are used as comparables in approving their rates. (See Chapter 18, Rate Administration Program, Paragraph D and E).

2. Limitations-Servicewide

a. Concessioners may not accept reservations more than two years in advance for accommodation facilities or services such as lodge rooms, trail rides, river runners or houseboats, (subject to the modification in 3.a., below), which are customarily rented for short periods of use. This does not preclude the concessioner from establishing a time limit for advance reservations of less than two years.

b. Waiting lists will be maintained by appropriate category for services such as boat slips or long term trailer spaces which are customarily rented for continuous occupancy. Vacancies will be offered to persons on the waiting list strictly by date of entry on the list. Pre-payment of rental more than one year ahead in order to secure the current rate or a discount is permitted but does not entitle the renter to be advanced on the waiting list.

3. Optional Limitations

Superintendents may augment or modify the above Servicewide limitations when necessary to phase in the new policy and procedures and to achieve equity between the individual visitor and the tour group visitor in accordance with the following guidelines.

a. Where past practices have allowed reservations to be made several years in advance, as is the case with certain river runners, those reservations will be allowed to stand as publicly advertised. However, the Superintendent should develop, with the concessioner, a phased plan to gradually bring advance reservation periods down, preferably within the two year limitation.

b. In any case where these new administrative procedures conflict with past practice, phasing in of the new procedures should be gradual, but in accordance with a mutually agreed written plan. In no case should previously confirmed reservations be cancelled in order to achieve compliance with the new policies and procedures. Full implementation however, should be accomplished within 5 years from the date of this issuance.

c. Additional measures may be needed to provide equity between the individual visitor and the tour group visitor. Tour measures are discussed in Paragraph F., below.

C. TIME SHARING

1. Definition

A time sharing agreement provides for the use of a specific facility or type of facility during a specific time period for a number of future years.

Since the fee title to real property on government land rests with the government, commercial time sharing agreements that convey ownership (fee simple) of real property are not valid in the National Park System. Commercial type time sharing agreements that grant a periodic occupancy right may be legal, but violate the policy (Paragraph A. 3. c., above) against special privileges to one category of visitors.

2. Prohibition

Any type of time sharing designed to provide ownership or periodic occupancy/use of any accommodation or facility for multiple years is prohibited. Existing official agreements, if any, of this nature may be continued for the established period but cannot be renewed or extended. No new agreements will be issued. Renewable rental agreements for services such as boat slips and long term trailer spaces, rented for continuous occupancy are not considered time sharing and are not subject to these provisions.

3. Commercial Versus Private Ownership

There are instances (usually involving houseboats) where time sharing companies attempt to time share personal property used within a park. These are commercial agreements that grant a periodic occupancy or use right and may or may not convey ownership to the personal property. These commercial agreements are in essence a lease or rental agreement and as such may violate preferential rights contained in an existing concession contract and therefore are prohibited. This, however, should not be construed to be the same as when a group of people purchase together personal property for their personal use and share in its use and expenses. In such situations the people in the group are the permanent owners of the property and are permitted to use their property within park areas.

D. DEPOSITS, REFUNDS, AND CANCELLATIONS

A deposit is intended to protect the concessioner from loss if the reservation is cancelled and cannot be refilled by another visitor. It is not intended to serve as an additional income source. Concessioner deposit practices should be no stricter than those of the businesses used as comparables for rate approval. They should be set forth in the approved rate schedule and/or the operating agreement.

1. Requirements

The following will apply Servicewide:

a. Concessioners may require a deposit as a condition for issuing a confirmed reservation.

b. Conditions under which deposits will be refunded and/or cancellation fees will be charged will be stated in detail in the concessioner's approved rate schedule and advertising material.

c. Pertinent portions of the refund policy will be printed on the concessioner's advertising material and the Reservation Confirmation Notice, including:

(1) **Honoring Rates**

If a deposit for individual reservations does not secure the rates for the facility or services reserved, the confirmation is to state in bold letters "RATES ARE SUBJECT TO CHANGE WITHOUT NOTICE AND ARE NOT GUARANTEED." Additionally, if the rates are not guaranteed then the traveler must be notified of any increase, prior to arrival at the park.

(2) **Advance Notice For Refund**

The method for cancelling a reservation and amount of advance notice required to receive a refund.

(3) **Cancellation Fee**

The amount of a cancellation fee, if any, and the conditions applicable to such a fee.

d. Refunds due will be made within 45 days from concessioner's receipt of the cancellation notice.

2. Preferred Method in Absence of Uniform Comparable Practices

When the comparables' deposit policies are not uniform, the following represent NPS preferred deposit practices for individual reservations. Deposit practices for tour groups may be set by negotiation between the concessioner and the tour agent, subject to the limitations discussed in paragraph F.1.b., below.

a. The deposit requirement should be limited to the first day's rent. (See exception in 3., below).

b. The rates in effect at the time of deposit should apply to the entire period of the visitor's stay, even though there may have been a price increase. Failing that, the old rate should at least apply for the same number of nights as the deposit.

c. A few hotel operations charge a cancellation fee even though the reservation is cancelled before a deadline. The fee is said to cover administrative costs of handling the reservation. Even though a few comparables

list a cancellation fee, closer inquiry will reveal that, in actual practice, it is rarely charged. This practice is strongly discouraged and will require Regional approval.

3. Exception for Remote Areas and Special Circumstances

When a concession facility or service is extremely remote, requires an uncommon mode of transportation to the facility or service (hiking, horse, aircraft, extended boat trip) and there is a resulting high likelihood that a cancellation cannot be filled, the concessioner should be allowed a more strict refund practice. This may include a longer advance cancellation time for obtaining a refund, requiring a deposit for the entire period, refunding only a portion of the full deposit or conditioning the refund on backfilling the cancellation.

E. PROTECTION OF DEPOSIT FUNDS

There is no practicable means whereby the National Park Service can guarantee the safety of visitors deposits. As is the case in private industry, there always exists the possibility that a company will fail and that its customers will lose their deposits. A requirement for bond or an escrow account has been explored and found infeasible.

F. COMMERCIAL GROUP TOURS AND CONVENTIONS

Group tours, conventions or group meetings can be beneficial to visitors, the National Park Service and concessioners. Group tours can assist in energy conservation, reduce traffic congestion, and provide a better means of transportation for older visitors and special populations. Tours and conventions can also be instrumental in increasing occupancy in the off season or in underutilized facilities and thereby extend the regular visitor season.

The two types of patronage differ in that a group tour consists of a body of visitors who come, usually by common carrier, to visit and tour the park itself rather than to attend meetings. In the case of conventions and meetings, the function rather than the park is the primary purpose of the visit. Group tours are usually sponsored by a tour organization or result from organizational affiliation of the members. A group tour should be regarded as a collection of individual visitors who differ from the ordinary visitor only in their mode of travel.

1. Commercial Group Tours

Group tours should be encouraged throughout the season, but in balance with demand from visitors who travel independently. The intent of the

policy is to assure that neither the tour nor the individual is excluded and that, when demand markedly exceeds supply, historic ratios of the two types of use are maintained.

a. MONITORING

Periodically the Superintendent and concessioner should review data on group tour bookings and cancellations. If such a review indicates that any of the following conditions exist, then the concessioner has the responsibility to take measures that will correct the deficiency.

(1) There has been an increase in visitor complaints about inability to get reservations.

(2) There is a pattern in which group tours have near total use of a particular class of accommodations during the peak season.

(3) There is a high rate of cancellations by tour companies. This can create a situation where an individual cannot get an early reservation because the rooms are blocked for tour companies, yet late requestors can get rooms because tour companies have cancelled in the interim. Cancellations which exceed 40% of original bookings are considered high.

b. POSSIBLE LIMITATIONS BY NPS

National Park Service involvement in a concessioner's group tour practices should occur only when one of the above preconditions exists and when the concessioner has proven unwilling or unable to solve the problem. In such instances, the Superintendent may require the concessioner to initiate certain restrictions, being objective, fair, and reasonable to all parties. The restrictions include:

(1) Deal more vigorously with those tour operators who cause the problem. Measures which could be considered include selective imposition of higher deposits, shorter advance reservation times, longer cancellation requirements or, ceasing to do business with poorer operators.

(2) Maintain a waiting list of individual visitors whose reservations could not be filled, so that those individuals may have the first priority to get group cancellations.

(3) Reduce the advance reservation period to less than two years.

(4) Place a maximum limit on the percentage of all accommodations, or on accommodations of a particular class, which may be reserved by group tours. The percentage limit should be based on historical data and should apply only to peak periods.

2. Conventions and Group Meetings

a. GENERAL

Conventions and group meetings are not to be permitted if they would interfere with the general visiting public's use and enjoyment of the area.

Those seeking facilities for conventions should be encouraged to do so during the off season or when historically occupancy is low. Such use may enable the concessioner to more fully utilize its facilities, extend the length of the operating season for the general public and assist in maintaining lower rates during the peak season. For that reason, convention bookings should not fill all rooms even during off season; a proportion, based on historic usage, should be held for the general public visiting the park.

b. APPROVAL PROCEDURES

(1) **Agreement**

The Superintendent and concessioner are to agree in writing as to when and under what conditions convention and group meetings are to be permitted. The agreement is to specifically include dates, maximum number of rooms or other facilities that may be used for such business and other special requirements that may be needed. The agreement is to be predicated on a review of past occupancy statistics, current visitor trends, projected occupancy rates and other pertinent information. The agreement is to be reviewed periodically and revised as necessary. The agreement may be part of the Operating Agreement (see Chapter 21).

(2) **Bookings**

(a) WITHIN AGREEMENT

The concessioner may book convention and group meetings within the criteria established in the agreement without further approval of the Superintendent.

(b) OUTSIDE OF AGREEMENT

If the concessioner desires to book groups outside of the parameters of the agreement, approval from the Superintendent will be required. The Superintendent is to determine if the facilities are to be made available based on the same type of review used in the basic agreement and is to convey his/her decision to the concessioner at the earliest practicable date.

(c) REPORTING

Concessioners are to keep records on conventions and group meetings both advance and actual use, which reflect groups booked, dates, number in group and the number of rooms and other facilities used. On request the concessioner is to provide the Superintendent with this information.

ACCEPTING REDUCED RATES AND ITEMS OF NOMINAL VALUE FROM CONCESSIONERS

A. LAW

Executive Order 11222, May 8, 1965

The order prescribes standards of ethical conduct for Government officers and employees.

B. REGULATION

43 CFR, Part 20.735-7

The regulation prohibits Departmental employees from soliciting or accepting gifts, gratuities, entertainment or other favors from a person seeking or who has a business relationship with the Department. The regulation, however, does permit a Federal employee to accept promotional type items and food of nominal value on infrequent occasions in the ordinary course of official luncheon or dinner meetings and while on an inspection tour.

This Chapter 30 has been approved by the Assistant Secretary of Interior, for Policy, Budget and Administration and is consistent with 43 CFR, Part 20.735-7.

COMPTROLLER GENERAL OPINION-B-143189
40CG 234, October 24, 1960

Opinion advised that the Interior Department may authorize contract provisions requiring concessioners to provide discounts or free service to Department officials who are on official business. Such discounts are not in violation of conflict of interest provisions because the discounts contract clause is a negotiated contract provision between the government and the concessioner.

54CG7, October 11, 1978

Advised that generally vested contract rights may not be waived without consideration but that GAO would not object to eliminating the discount clause contained in existing concession contracts.

Based on the Comptroller General's opinion, the Director, by memorandum dated January 25, 1979, directed the discontinuance of reduced rates to employees, even if they were on official business. Subsequent experience indicates that the change has resulted in higher travel costs and fewer inspections of concessioner operations. The policy and procedures set forth below permit reinstatement of reduced rates but only under such safeguards as will prevent abuse or misapplication.

C. POLICY

Management Policies Manual, Chapter VIII
Accepting Reduced Rates and Items of Nominal Value From Concessioners

National Park Service employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the Government's advantage and is contained in the concession authorization. National Park Service employees may not solicit directly or indirectly any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from a concessioner or other person who conducts operations or activities that are regulated by the Department. However, employees may accept food and refreshments of nominal value on infrequent occasions during official luncheon or dinner meetings and promotional material of nominal value from concessioners.

D. REDUCED RATES

1. General

Concessioners are to provide reduced rates to Government employees only while the employees are conducting official business, in order to benefit the Government by lowering travel expenses, permitting more effective program control, and maximizing use of Federal funds. If the Government is not obliged to pay for the service or reimburse the employee, no discount may be given. Reduced rates for lodging and essential transportation may be provided directly to Federal employees (not family members) traveling under an approved travel authorization in accordance with Federal Travel Regulations, (FPMR 101-7) or other approved means. A purchase order is used for other services. Reduced rates are not applicable under any circumstances for food or merchandise, including groceries, gasoline or other automobile needs. The offering of reduced rates by concessioners or the acceptance of reduced rates for any purpose while not conducting official business or otherwise outside the parameters of this policy is strictly prohibited. Future concession contracts will contain a provision which requires concessioners to provide Federal employees with reduced rates only while on official business; existing contracts may be so amended if the concessioner agrees. All such rates must be made part of the concessioner's approved rate schedule. (See Chapter 18, Rate Administration Program)

2. Lodging And Essential Transportation

Essential transportation is defined as transportation that is required to conduct official business and in which the concessioner provides the only practicable means of transportation from one point to another.

a. DEPARTMENT OF INTERIOR EMPLOYEES

When lodging or essential transportation is obtained by Travel Authorization or other approved means, the authorization must indicate the park or area as a destination point. Blanket Travel Authorizations need not so specify.

Before allowing a reduced rate, the concessioner must be shown a copy of the authorization and employee identification.

b. NON-DEPARTMENT OF INTERIOR FEDERAL EMPLOYEES

It is assumed that under this situation the Superintendent will be or should be knowledgeable of the purpose of travel and that if reduced rates are applicable he/she will advise the traveler. For the traveler to receive the reduced rate the Superintendent is to send the traveler a letter, stating that he/she is conducting official business and specify services for which the reduced rate is authorized. The employee must present the concessioner with identification, a copy of his/her signed Travel Authorization and a copy of the Superintendent's letter authorizing the reduced rates.

3. Reduced Rates for Other Services

a. ELIGIBILITY

This provision applies to non-essential transportation (generally river runners, tour boats, horse rides) and other services for which a fee is charged. For an employee to be eligible for reduced rates for other services there must be a valid official purpose for his/her participation in the activity and the Government must be responsible for payment of the fee or charge. Such reduced rate authorization will fall under one of two categories:

(1) **General Official Business**

There must be a definite relationship between the employee's official duties and the service provided by the concessioner. For example, a ranger may accept a reduced rate for a river trip to inspect the accumulation of debris along a river bank.

(2) **Concessioner Review Program**

(a) The Superintendent must have designated the employee to conduct official operational evaluations in accordance with the Concessioner Review Program.

(b) Reduced rates may not be granted in excess of the number of evaluations used for the Operational Performance Program.

(c) For each reduced rate authorization, the prescribed reports contained in the Operational Performance Program are to be completed.

b. PROCEDURES

(1) Services are to be purchased via Requisition (Form DI-1) and a Purchase Order (Form 147). A Travel Authorization may not be used. At the bottom of both forms it must be stated "(Name of employee) will be on official business and is entitled to the reduced rate for (specify) as provided for in the Concessioner Rate Schedule."

(2) The employee must present the concessioner with identification and a copy of the purchase order containing the appropriate wording that authorizes reduced rates.

4. Exclusions

Reduced rates, or no charge arrangements, under the following circumstances were in effect prior to the inception of this policy, may be authorized in the future and are not subject to its limitations:

a. A charge is not normally applicable in situations where the NPS is providing a service to the concessioner or working directly with the concessioner in providing a service or activity for the public. For example, an NPS employee is placed on a boat for the purpose of conducting an interpretation program. In such situations the Service does not pay the concessioner for the NPS employee's boat trip.

b. Employees may accept reduced rates or discounts offered to the general public so long as the term or conditions are the same as those for the public. Such discounts, however must be approved under the concessioner's rate schedule.

c. Nothing herein shall be construed to limit negotiation of price for procurement type actions under which the concessioner provides goods or services to NPS. The concessioner in such an instance is like any other vendor to the government and is not governed by the concession contract.

E. ACCOUNTABILITY AND VERIFICATION

1. The employee will be held accountable for accepting reduced rates only in accordance with this policy.

2. The Superintendent is to require a periodic report from the concessioner providing a listing of all employees granted reduced rates and the services provided.

3. The Superintendent is to review the list and compare it to available data concerning official visitors or approved purchase orders.

4. Any instance of an individual receiving a reduced rate for which he/she is not entitled, is to be investigated. The Superintendent will notify the employee's supervisor, in writing, of the suspected violation. If the employee is found to have violated the policy, appropriate disciplinary action must be taken.

F. CONTRACTUAL PROCEDURES FOR ALLOWING REDUCED RATES

1. Existing Contracts

a. AMENDMENT

An existing Concession contract or permit may be amended to permit reduced rates to NPS employees on official business. Reduced rates are to be uniformly applied and approved as part of the concessioner's rate schedule. The concessioner is not required to accept this contract amendment. If the contract is amended similar wording as contained in Paragraph 2 below is to be used.

b. CONDITIONS

Discounted rates may be subject to special conditions by the concessioner such as no discount during the peak season or a differential between the on-and off-season. These conditions are also to be made part of the rate schedule.

2. New Contracts

The following clause will be inserted in Standard Contract Language to replace Section 3(a)((3). Its use is mandatory for all Statements of Requirements published after January 1, 1984.

Sec. 3(a)(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

G. ACCEPTANCE OF FOOD AND ITEMS OF NOMINAL VALUE

1. Official Functions

In accordance with 43 CFR 20.735-7 (b)(2), An employee may accept: (a) Food and refreshments of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official meeting or on an inspection tour where an employee may properly be in attendance and (b) advertising material of nominal value such as pens, pencils, note pads, calendars, and other similar items.

2. Special Events

The regulation permits National Park Service employees to attend infrequent special functions sponsored by the concessioner for the purpose of fostering good relations with local communities and to obtain support necessary to accomplish the Service's mission. At such functions, Federal employees may accept food and other favors of nominal value. The Superintendent shall approve such events and attendance. Such approval must be given in advance and in writing, and must reflect a conscious determination that such activity meets the criteria stated herein. Announcements or publicity should in no manner imply NPS or park sponsorship.

Attendance at such events is acceptable under the following circumstances:

- a. On an infrequent basis
- b. Open to the local community, and
- c. When failure to attend a function could hamper relations with the local community and possibly deprive the Service from obtaining support to accomplish its mission.

NPS CONCESSION EMPLOYEE TRAINING

A. LAW

P.L. 85-507, Government Employee Training Act

In order to promote efficiency and economy in the operation of the Government and provide means for the development of maximum proficiency in the performance of official duties . . . it is necessary and desirable that training be supplemented and extended by the Government.

B. REGULATION

None

C. POLICY

None

D. INTRODUCTION

Concessions Training Programs will be initiated and administered to meet management needs and career needs of all employees without discrimination because of race, religion, color, national origin, sex, age, handicapping condition and other factors. In order to meet the diversity of Regional and/or Park training needs, training and development will be provided primarily through Service sponsored programs.

E. RESPONSIBILITY

Training is a vital part of good program management. Concessions training considerations vary from region to region due to size and scope of operations, distribution of personnel, specific responsibilities, training backgrounds, career goals, etc., therefore, a continuous ongoing Concessions Training Program for all concessions personnel is needed. It should be noted, however, that the individual has a responsibility for his/her own growth and development especially beyond the immediate job related training needs. To assure Concessions training is provided at all levels WASO, Region and Field responsibilities are defined as follows:

1. Washington Office

a. Conduct Servicewide Concession Training Programs

b. Provide lesson plans, teaching aids to Regions for Regional Concession Training Program.

c. Serve as liaison with WASO Division of Training, providing lesson plans and selection of instructors for NPS Orientation Course, as well as those Concessions Training Programs funded by NPS Training Centers.

d. Identify cost effective training alternatives and resources for Servicewide Concession Training Programs.

e. Assess Servicewide concessions training needs through development of NPS Concessions Training Roster.

f. Provide funding for Servicewide Concessions Training Programs which are sponsored by WASO.

2. Region

a. To prevent duplicated efforts and to provide for greater access to concession training, Regions are responsible for conducting some of their own concessions training programs, which may be combined with other regions. Regions are responsible for keeping WASO informed of such training by providing copies of course outline, objectives and class roster.

b. Regions are responsible for utilizing NPS Concession Training Roster in identifying training needs for concessions personnel within their Region and parks.

c. Regions are responsible for submitting to WASO any revisions and/or additions to NPS Concessions Training Roster.

d. Funding for Regional Concessions Training Programs is the responsibility of the sponsoring Region and/or Regions.

e. Regions are responsible for ensuring that the Annual Regional Training Plan reflects Regional Concessions Training needs.

3. Park

a. Park Superintendent is responsible for assessing training needs of all park employees having concession responsibilities and making certain those employees receive appropriate concessions training.

b. Park is responsible for keeping Region informed of any changes and/or revisions needed to NPS Concessions Training Roster.

F. PROCEDURES

Funding for concessions training is limited, therefore, selection of students is to be made carefully to ensure those concession employees in need of

concessions training receive the training necessary to assure maximum proficiency in the performance of their duties. Formalized training is not the only development alternative, other means of training such as a detail to another office or area as well as On-The-Job Training (OJT) may also be considered as training alternatives.

Nominations of students to attend Servicewide Concessions Training Programs funded by either WASO Concessions Division or NPS Training Centers must be submitted through the Regional Concessions Office. Nominations are to be reviewed and prioritized by the Regional Concessions Office, in cooperation with the Regional Training Office, and forwarded to the WASO Concessions Division. WASO selection will be based on Regional submission and current NPS Concessions Training Roster.

TO BE PRINTED AT A LATER DATE

OTHER OPERATIONS

A. SALES OR USE TAX

1. Law, Regulation, Policy

a. LAW

4 U.S.C. 105

. . . . State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

b. REGULATION

None

c. POLICY

See law above.

B. BEVERAGE CONTAINER PROGRAM

1. Law

P.L. 89-272 Solid Waste Disposal Act, October 20, 1965 as amended by P.L. 91-512, Resource Recovery Act October 26, 1970 (Section 211), 42 U.S.C. §3251-3259 Executive Order 11752

If an Executive Agency . . . has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities or such an agency enters into a contract with any person for the operation . . . of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities, then such agency shall insure compliance with the guidelines recommended under section 209 and the purpose of this Act in the operation or administration of such property or facility, or the performance of such contract.

2. Regulation

40 CFR Part 244 Solid Waste Management Guidelines for Beverage Containers.

Sec. 244.100 SCOPE

(b) Section 211 of the Act and Executive Order 11752 makes the "requirements" section of the guidelines mandatory upon Federal Agencies. They are recommended for adoption by State and local governments and private agencies.

(c) (1) These guidelines for Beverage Containers are intended to achieve a reduction in beverage container solid waste and litter, resulting in savings in waste collection and disposal costs to the Federal Government. They are also intended to achieve the conservation and more efficient use of energy and material resources through the development of effective beverage distribution and container collection systems.

(4) Final determination of how the requirements of the guidelines will be met rests with the head of each Federal Agency.

3. Policy

Management Policies Manual, Chapter VIII Beverage Container Program

The National Park Service encourages the saving of energy and the reduction of litter through the use of recyclable containers wherever practical. To that end, NPS has established a program for the use of returnable beverage containers for which a deposit is charged.

4. Responsibility

Park Managers/Superintendents are responsible for application of the program, subject to the procedures set forth below.

5. Procedures

a. BEVERAGE CONTAINER GUIDELINES REQUIREMENTS

(1) All beverages in beverage containers sold or offered for sale shall be sold in returnable beverage containers.

(2) A deposit of at least five (5) cents shall be charged unless the local area has an established return system at a lower minimum deposit level.

(3) The concessioner shall accept from consumers the empty beverage containers sold by that concessioner and pay the consumer the refund value of the container.

(4) Refunds shall be provided at the place of sale (point of purchase) whenever possible or as close to that point as practical if original point is unattended.

(5) Refillable beverage containers shall be returned to distributors for refilling and all other returnable containers shall be returned for recycling where markets for recyclable materials are available.

(6) All beverage containers must clearly indicate by embossing, stamp, or label securely affixed to the beverage container, that the container is returnable and the refund value of the container.

(7) Concessioner must inform consumers that beverages are sold in returnable beverage containers by placing a sign or shelf label or both at the point of purchase of the container. The sign must state that the containers are returnable, list the beverage price and deposit amount, indicate where empties may be returned for refund and show a sample of the identifying label, stamp or embossing if so marked.

b. EXCEPTIONS

It is recognized certain conditions may exist in which it may not be practical to enforce the requirements of the Beverage Container Guidelines due to geographic or logistical problems. Therefore, the program may be discontinued at the discretion of the Superintendent if one or more of the following conditions apply:

(1) Program requires additional manpower or incurs other costs which result in its losing money.

(2) Efforts to implement the requirements have failed to induce consumers to buy beverages in returnable containers or to return them when empty.

(3) Impractical to establish refund location in small remote outlets where the majority of consumers are transient and it is not possible to use returnable containers effectively.

(4) There is no market for recyclable container within a reasonable distance.

(5) The program may not be discontinued if State or local law in the area mandates a deposit program.

Superintendents are required to report to the Regions those concession facilities exempted from the program.

Non-implementation decisions are not to be construed as a policy against environmental progress. All Superintendents and concessioners must continue to promote energy conservation and waste reduction by any means possible and continue to inform park visitors of NPS commitment in both of these areas.

c. REPORTS

Annual reports previously required for the Beverage Container Program are discontinued.

C. SMOKING IN PUBLIC BUILDINGS

1. Law

None

2. Regulation

41 CFR 101-20.000

41 CFR 101-20.109-10

These regulations relate only to GSA controlled buildings and facilities. In establishing guidelines pursuant to the regulations, Departmental Manual 310 extends coverage to buildings and facilities controlled by DOI. (See Policy)

3. Policy

Management Policies Manual, Chapter VIII

Smoking In Public Buildings

310 DM-11

The National Park Service policy is the same as the Depart-

mental policy -- smoking in all DOI occupied space is to recognize the rights of all individuals (employees and visitors) by providing an equitable balance of designated "smoking" and "no smoking" areas. In joint-use space, DOI occupants will abide by the guidelines established by the principal occupant when they are more stringent than those of Interior. Concession facilities are DOI controlled buildings and this policy, therefore, applies to concession facilities.

4. Procedures

Concession facilities must comply with the following Departmental guidelines relative to NPS areas. Posting of notices is to be accomplished by the concessioner:

a. DINING ROOMS AND CAFETERIAS. "No Smoking" areas should be established in dining areas, as appropriate.

b. SNACK BAR. Smoking is prohibited in all areas where food is sold without wrapping.

c. CONFERENCE ROOMS & CLASSROOMS. Smoking is prohibited. Exception may be made on a case-by-case basis by the office controlling the meeting area.

d. ELEVATORS. Smoking is prohibited in all elevators.

f. GIFT SHOPS. Smoking is prohibited in all gift shops.

g. MEDICAL FACILITIES. Smoking is prohibited in all health care units.

h. RECORD/STORAGE AREAS. Smoking is prohibited in all record/storage areas.

i. WAITING/RECEPTION AREAS. Smoking is permitted in all public waiting reception areas. Where space allows public areas should be divided into "smoking" and "no smoking" areas.

In private waiting/reception areas heads of bureaus/ offices shall designate the areas as either "smoking" or "no smoking" areas and provide appropriate disposal receptacles within all "smoking areas."

j. WORKING AREAS. Supervisors should strive to protect the rights of smokers and non-smokers and where appropriate and reasonable, establish "smoking" and "no smoking" areas.

(1) Employees occupying an office - Supervisor may designate the office "No Smoking" area.

(2) Office shall be designated "No Smoking" when an employee has an illness that is aggravated by smoking environment and documentation from physician is presented.

(3) All areas containing flammable and/or highly combustible materials will be designated as "no smoking" areas and meet the requirements of national standards promulgated by the National Fire Protection Association.

k. All "No Smoking" areas must be appropriately identified.

5. Responsibilities

Superintendents are responsible for making local decisions as to the applicability of these guidelines for each concessioner area.

D. ALCOHOLIC BEVERAGES

1. Law

None

2. Regulation

The following regulations are quoted from Parts 2 and 5 of 36 CFR:

§ 2.16 Intoxication; possession of alcohol by minors.

(a) Presence in a park area when under the influence of alcohol, to a degree that may endanger oneself, or another person, or property, or may cause unreasonable interference with another person's enjoyment of a park area is prohibited.

(b) Except where State laws prescribe a lower minimum age, the sale or gift of an alcoholic beverage to a person under 21 years of age is prohibited. In States which prescribe a lower minimum age, the sale or gift of an alcoholic beverage to a person under that prescribed age is prohibited. (See also § 5.2(a) of this chapter.)

(c) Except where State laws prescribe a lower minimum age, possession of alcoholic beverages by a person under 21 years of age is prohibited. In States which prescribe a lower minimum age, possession of alcoholic beverages by a person under that prescribed age is prohibited.

[35 FR 12542, Aug. 6, 1970, as amended at 37 FR 6735, Apr. 4, 1972]

§ 5.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations (See also § 2.35 of this chapter.)

(b) No such liquor shall be sold on any privately owned lands under the legislative jurisdiction of the United States within Glacier, Lassen Volcanic, Mesa Verde, Mount McKinley, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone, or Yosemite National Parks, unless a permit for the sale thereof has first been secured from the appropriate Regional Director.

(1) In granting or refusing applications for permits as herein provided, the Regional Directors shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, the local laws governing the sale of liquor, and any other local factors which have a relationship to the privilege requested.

(2) A fee will be charged for the issuance of such a permit, corresponding to that charged for the exercise of similar privileges outside the park area boundaries by the State government, or appropriate political subdivision thereof within whose exterior boundaries the place covered by the permit is situated.

(3) The applicant or permittee may appeal to the Director from any final action of the appropriate Regional Director refusing, conditioning or revoking the permit. Such an appeal shall be filed, in writing, within 20 days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Director may be appealed to the Secretary of the Interior within 15 days after receipt of notice by the applicant or permittee of the Director's decision.

(4) The permit for sale of intoxicating liquors shall contain such general and special conditions as the Regional Director may deem reasonably necessary to insure safe and orderly management of the park area.

(5) The permittee shall comply with all State and county laws and regulations, other than fee and license requirements, which would be applicable to the premises and to the sale and dispensing of intoxicating beverages if the privately owned lands were not subject to the jurisdiction of the United States.

[31 FR 16660, Dec. 29, 1966, as amended at 35 FR 12542, Aug. 6, 1970]

3. Policy

NPS Management Policies Manual, Chapter VIII Alcoholic Beverages

The sale of alcoholic beverages may be permitted in park areas, subject to applicable Federal, State, local laws and regulations.

4. Responsibility

As set forth in the CFR extracts, above.

E. ADVERTISING

1. Law

None

2. Regulation

36 CFR Part 5

§ 5.1 Advertisements

Commercial notices or advertisements shall not be displayed, posted or distributed on federally owned or controlled lands within a park area unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices and advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public.

3. Policy

NPS Management Policies Manual, Chapter VIII
Advertising

Billboard advertising is prohibited in areas administered by the National Park Service. Billboard advertising outside these areas shall be discouraged. All advertising and other public information materials shall be subject to prior approval by the National Park Service.

4. Procedures

a. DEFINITION

Publications and advertising include brochures describing facilities and services, rate schedules, tour agents' tariff or circulars, employment circulars, employee application forms, reservation acknowledgement forms, radio, television, or newspaper commercials, signs and other informational materials issued to or displayed for the public.

b. ALL ADVERTISING

All such publications and advertisements should include:

- (1) The name and address (on and off season, if applicable),
- (2) A statement that the concessioner is issuing the publication or advertisement,
- (3) A statement that the concessioner is authorized by the National Park Service, Department of Interior, to serve the public in the park.

c. DESCRIPTIVE LITERATURE

When the publication or advertisement is designed to describe the facilities and services which are available to the public, the Superintendent should also consider whether it is objective, completely accurate, and if applicable, covers the following:

- (1) Opening and closing dates
- (2) Transportation to the park, and the carriers offering transportation service
- (3) Transportation service in the park.
- (4) Room reservation procedures, including deposits, check-in and check-out deadlines, and telephone numbers where reservations can be made.
- (5) Care of children, such as availability of a nursery, or cribs and playpens, and reduced room and food rates, etc.
- (6) Availability of park and other programs, such as nature walks, conducted hiking, campfire programs, entertainment, etc.
- (7) Weather conditions and changes, and clothing needs.
- (8) Policy regarding pets.
- (9) Approved prices for rooms or other relatively expensive services.
- (10) Policy on acceptance of credit cards.
- (11) Handicapped Accessibility.

When used, advertisements for employment must contain a statement that the company is an equal opportunity employer, (See Exhibit B of the Standard Contract Language.)

When used, advertisements for employment must contain a statement that the company is an equal opportunity employer, (See Exhibit B of the Standard Contract Language)

The Superintendent is responsible for reviewing and approving all concessioner publications and advertising prior to publication, distribution, or broadcasting to make certain that they accurately reflect policy, are descriptive, easy to understand and correlated with the management objectives of the park.

F. WEIGHTS AND MEASURES

1. Law, Regulation and Policy

None.

2. Responsibility

The Superintendent, in association with the appropriate State Office, is responsible for ascertaining the accuracy of weighing and measuring devices used by the concessioner, and for taking appropriate action to correct any defect. He should, therefore, periodically arrange for tests of such devices, or have tests made at least annually by a designated member of his staff. Standard weights and other testing equipment may be purchased from operating funds.

When making arrangements for tests of weighing and measuring devices, the Superintendent should consider various alternatives, such as:

- The State Weight and Measures or Standards Offices
- Industry or Trade Association

In most cases a report or certificate from the inspector should be adequate.

G. TRAILER VILLAGES (TRANSIENT AND LONG-TERM)

1. Law

None.

2. Regulation

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§5.15. Residing in park areas is prohibited, except in accordance with a permit or other written agreement with the United States authorizing such use, or by employees of the National Park Service.

3. Policy

Management Policies Manual, Chapter VIII
Trailer Villages

Trailer villages for concessioner or Service employees are generally discouraged and should be approved only if in conformance with the park area development concept plan. Existing long-term trailer villages occupied by non-employees may continue, but occupancy and use must conform to rules and regulations established by each Superintendent. Hereafter, trailer villages for non-employees may be established only for transient occupancy.

4. Requirements

The following statements reflect the longstanding position of the Service regarding trailer villages.

- a. No expansion of existing villages except where construction is already under way or commitments have been made permitting same;
- b. Where existing contracts provide for construction of trailer villages but none exists or is under construction, authorization to proceed with the understanding that there will be no permanent occupancy;
- c. Honor all commitments with respect to length of stay in existing villages and those under construction where the influence of commitment exists;
- d. At expiration of existing contracts, phase out and obliterate existing trailer villages unless they are to be operated under terms of no occupancy in excess of 30 days.

H. SCENIC VIEWERS

1. Law

None.

2. Regulation

None

3. Policy

Management Policies Manual, Chapter VIII
Scenic Viewers

It is the policy of the National Park Service to allow or provide viewing devices (pedestal binoculars or telescopes) at appropriate locations within units of the National Park System when the affected Superintendent or unit manager determines that such devices are desirable for meaningful interpretation or understanding of the resource. Viewers may be provided by the National Park Service or by others under permit or contract.

Viewers provided by the National Park Service will be coin-operated unless the collection of fees is not cost-effective or unless the Superintendent or manager finds the viewing devices to be such an integral part of the visitor experience that subsidy is warranted.

When such devices are to be installed and maintained by others, the Superintendent or unit manager shall approve in writing their number, location, an appropriate maintenance standard, and whether they are to be free or coin-operated. If coin-operated, the rate to be charged shall be approved by the Superintendent or unit manager and be administered under a concession authorization.

[TO BE PUBLISHED AT A LATER DATE]

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GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

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